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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 134.

THE EASTERN RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 16, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, DECEMBER 5, 1888.

1 I.—*Petition. Filed July* 16, 1883.

In the Court of Claims.

THE EASTERN RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 13967.

To the honorable the judges of the United States Court of Claims:

Your petitioner, The Eastern Railroad Company, a corporation duly incorporated by the laws of the State of Massachusetts, respectfully represents—

First. That it is and was prior to the year 1877 the owner and operator of certain lines of railroad in the above-mentioned States, to wit, from Portland, Maine, to Portsmouth, New Hampshire; from Brock's Crossing, New Hampshire, to North Conway, New Hampshire; from Wolfboro' Junction to Wolfboro', New Hampshire; from Portsmouth, New Hampshire, to Dover, New Hampshire; from Boston, Mass., to Portsmouth, New Hampshire; from Boston, Mass., to West Lynn Depot, Mass.; from Salem, Mass., to Rockport, Mass.; from Salem, Mass., to Marblehead, Mass.; from Salem, Mass., to Lawrence, Mass.; from East Salisbury to Amesbury, Mass.; from Wenham to Essex, Mass.; from Lynn to Marblehead, Mass., and from Wakefield to Peabody, Mass., and upon said lines it was, on the first day of July, 1877, and has ever since been running trains of cars as common carriers of freight and passengers for hire.

2 Second. That the Postmaster General entered into several contracts with petitioner, as hereinafter mentioned, for, among other things, the carrying and transporting of the United States mails for a term of four years from the commencement of the service on the first day of July, 1877, at the rate of compensation then fixed by the acts of Congress approved the third day of March, 1873, and the twelfth day of July, 1876, and subject to the requirements and regulations of the Post Office Department then governing the railway mail service of the United States.

Third. That the rate of compensation upon the said contracts was: Upon route numbered 9, from Portland to Portsmouth, a distance of 52.56 miles, at $212.40 per mile per annum; on route numbered 1014, from Brock's Crossing to North Conway, a distance of 71.11 miles, at $77.40 per mile per annum; from Wolfboro' Junction to Wolfboro', route numbered 1015, a distance of 12.11 miles, at $45 per mile per annum; on route numbered 1016, from Portsmouth to Dover, a distance of 11.60 miles, at $45 per mile per annum; on route numbered 3001, from Boston to Portsmouth, a distance of 57.28 miles, at the rate of $227.70 per mile per annum; on route numbered 3002, from Boston to West Lynn Depot, a distance of 11.60 miles, at $45 per mile per annum; on route numbered 3003, from Salem to Rockport, a distance of 20.69 miles, at the rate of $49.50 per mile per annum; upon route numbered 3004, from Salem to Marblehead, a distance of 4.49 miles, at the rate of $48.60 per mile per annum; on route numbered 3005, from Salem to Law-

rence, a distance of 19.01 miles, at the rate of $45 per mile per annum; on route numbered 3007, from East Salisbury to Amesbury, a distance of 3.90 miles, at the rate of $45 per mile per annum; upon route numbered 3008, from Wenham to Essex, a distance of 5.54 miles, at the rate of $45 per mile per annum; on route numbered 3009, from Lynn to Marblehead, a distance of 6.16 miles, at the rate of $61.20 per mile per annum; and on route num-
3 3010, from Wakefield to Peabody, a distance of 9.08 miles, at a rate of $45 per mile per annum.

Fourth. That petitioner faithfully performed the services, as required of it, according to the rules and regulations of the Post Office Department, during the entire terms of the several contracts, and thereby became entitled to the full compensation therefor, as provided for by the terms of the original contracts.

Fifth. That it was entitled to have received upon route numbered 9 the sum of $11,163.74 per annum during the term of service, and was paid at such rate for the first year thereof, ending the first day of July, 1878; but it says that from and after the said first day of July, 1878, the Postmaster General, arbitrarily and in violation of petitioner's right, reduced and deducted from its pay five (5) per cent. thereof for the remaining three years of the term and only allowed and paid ninety-five (95) per cent. of the compensation it was entitled to, making $558.19 so deducted and retained from its pay for the period between the first day of July, 1878, and the first day of July, 1879. It further says that it contracted upon the basis of compensation fixed by the aforesaid acts of Congress, and at or about the commencement of the service a weighing of the mails transported was had, and upon the returns of such weights the rate of compensation then allowed was fixed; that subsequently the said Postmaster General caused a reweighing of the mails transported upon this route, and upon the returns thereof it was entitled, according to the basis existing at the time of the commencement of the contract and service, to have received $281.70 per mile per annum, but the said Postmaster General by his order, to take effect the first day of July, 1879, likewise reduced and deducted from such increased rate of compensation five (5) per cent., and only allowed and paid ninety-five (95) per cent. thereof for the remaining two years of the term, making $1,480.64 so deducted and retained from its compensation between the first day of July, 1879, and the first day of July, 1881.

4 Sixth. Upon route numbered 1014 it was entitled to have received $5,503.91 per annum during the term of service, and was paid at such rate for the first year thereof, ending the first day of July, 1878; but from and after the said date the Postmaster General, arbitrarily and in violation of petitioner's right, reduced and deducted from its pay five (5) per cent. for the remaining three years of the term and only allowed and paid ninety-five (95) per cent. of the compensation it was entitled to, making $825.60 so deducted and retained from its pay for the said remaining period, between the first day of July, 1878, and the first day of July, 1881.

Seventh. It was entitled to have been paid per annum upon route

numbered 1015, $544.95; upon route numbered 1016, $522; route numbered 3002, $522; upon route numbered 3005, $855.45; upon route numbered 3007, $175.50; upon route numbered 3008, $249.30, and upon route numbered 3010, $408.60 during each year of the said several contract terms, and was paid for the services during the first year thereof and until the first day of July, 1878; but from and after the said date the Postmaster General, arbitrarily and in violation of petitioner's rights under its contracts upon the said routes, reduced and deducted from its pay upon the same five (5) per cent. for the remaining three years of the terms and only allowed and paid ninety-five (95) per cent. of the compensation to which it was entitled, making $491.64 so deducted and retained by him upon the said routes between the first day of July, 1878, and the first day of July, 1881.

Eighth. Upon route numbered 3001 it was entitled to have been paid at the rate of $13,042.66 per annum, and was paid at such rate for the first year's service and up to the first day of July, 1878; but from and after such last-mentioned date the Postmaster General, arbitrarily and in violation of petitioner's right, reduced and deducted from its pay five (5) per cent. thereof for the next year of the term and only allowed and paid ninety-five (95) per cent. of
5 the compensation it was entitled to, making $652.13 so deducted and retained from its pay for the period between the first day of July, 1878, and the first day of July, 1879; that it contracted on this route upon the same basis of compensation as the other and hereinbefore-mentioned routes, and there was likewise a weighing of the mails transported and the rate of pay was fixed upon the returns of such weights of mails. Subsequently the Postmaster General caused a reweighing of the mails carried on this route, and upon such returns of weights petitioner was entitled to have received $292.50 per mile per annum. Nevertheless, the said Postmaster General, by his order, to take effect the first day of July, 1879, did likewise reduce and deduct from such increased rate of compensation five (5) per cent. and only allowed and paid ninety-five (95) per cent. thereof for the remaining two years of the term, making $1,675.48 so deducted and retained from its pay between the first day of July, 1879, and the first day of July, 1881.

Ninth. On route numbered 3003 it was entitled to have received $1,024.15 per annum during the term of service, and was paid at such rate for the first year thereof, ending the first day of July, 1878; but from and after that date the Postmaster General, arbitrarily and in violation of petitioner's rights, reduced and deducted from its pay five (5) per cent. for the remaining three years of the term and only allowed and paid ninety-five (95) per cent. of the compensation it was entitled to, making $153.63 so deducted and retained from its pay for the said remaining period between the first day of July, 1878, and the first day of July, 1881.

Tenth. On the route 3004 it was entitled to have received $218.21 per annum during the term of service, and was paid at such rate for the first year thereof, ending the first day of July, 1878; but from and after that date the Postmaster General, arbitrarily and in violation of petitioner's right, reduced and deducted from its pay

five (5) per cent. for the remaining three years of the term and only allowed and paid ninety-five (95) per cent. of the compensa-
6 tion it was entitled to, making $32.73 so deducted and retained from its compensation for the remaining period between the first day of July, 1878, and the first day of July, 1881.

Eleventh. And on route numbered 3009 it was entitled to have received $376.99 per annum during the term of service, and was paid at such rate for the first year thereof, ending the first day of July, 1878; but from and after that date the Postmaster General, arbitrarily and in violation of its rights, reduced and deducted from petitioner's pay five (5) per cent. for the remaining three years of the term and only allowed and paid ninety-five (95) per cent. thereof, making $56.52 so deducted and retained from the compensation it was entitled to for the remaining period between the first day of July, 1878, and the first day of July, 1881.

Twelfth. The several sums above set forth and deducted and withheld from its pay under the several contracts mentioned above were wrongfully and unlawfully retained by the said Postmaster General from what it was entitled to have received under the said contracts for the services rendered.

Thirteenth. And petitioner never assented to the said deductions from its compensation, and has never yielded nor relinquished its claim to the full pay and for which it undertook and contracted to carry the United States mails as aforesaid.

Your petitioner therefore prays judgment for the sum of five thousand nine hundred and twenty-six dollars and fifty-six cents ($5,926.56).

THE EASTERN RAILROAD CO.,
By GEO. E. B. JACKSON, *President.*

SAM'L M. LAKE,
Att'y for Claimant.

7 UNITED STATES OF AMERICA, }
District of Maine, } *ss:*

George E. B. Jackson, president of the Eastern Railroad Company, the petitioner named in the foregoing petition, being duly sworn, on his oath states that no assignment or transfers of the said claim or any part thereof or any interest therein has been made; that petitioner is justly entitled to the amounts therein claimed from the United States after allowing all just credits and offsets, and that he believes the facts stated in the said petition to be true.

GEORGE E. B. JACKSON.

Sworn and subscribed before me this ninth day of July, A. D. 1883.

[L. S.]

T. H. HASKELL,
U. S. Commissioner.

8 II.—*Traverse. Filed November* 14, 1883.

And now comes the Attorney General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations and asks judgment accordingly.

THOMAS SIMONS,
Ass't Att'y General.

9 III.—*Findings of Fact and Conclusion of Law by the Court. Filed January* 12, 1885.

Findings of fact.

This case having been heard before the Court of Claims, the Court, upon the evidence, finds the facts to be as follows:

I.

For some years immediately before June 30, 1877, the claimant had carried the mails of the United States on each of the routes named in the petition, under several written contracts, which expired on that day and were in the following form:

This article of contract, made the 31st day of March, in the year one thousand eight hundred and seventy-four, between the United States of America (acting in this behalf by the Postmaster General) and the Eastern Railroad Company, by John Wooldrige, its president, and Frank Jones and J. W. Johnson, as sureties, witnesseth:

That whereas the said railroad company has been accepted, according to law, as contractor for conveying the mail on route No. 615, from Boston (Mass), by Maplewood, Linden, Cliftondale, Saugus Centre, Saugus, and Linn Common (n. o.) to West Lynn depot (n. o.) and back, by railroad, twelve times a week, by a schedule satisfactory to the Department, at five hundred dollars per year, being at the rate of $50 per mile per annum, for and during the term beginning January 1st, eighteen hundred and seventy-four, and ending June thirty, eighteen hundred and seventy-seven:

Now, therefore, the said Eastern Railroad Company, as contractor, and the said Frank Jones and J. W. Johnson, as sureties, do jointly and severally undertake, covenant, and agree with the United States and do bind themselves—

1st. That the mail (including British, Canada, and other foreign

mails) shall be conveyed in a secure and safe manner, free from wet or other injury, in a separate and convenient car or apartment of a car, suitably fitted up, furnished, warmed, and lighted, under direction of the Post Office Department and to the satisfaction of the Postmaster General or of his authorized agent, at the expense of the contractor, for the assorting and safe-keeping of the mails and for the exclusive use of the Department and its mail agent, if the Department shall employ such agent, and such agent is to be conveyed free of charge. When there is no agent of the Department the railroad company shall designate a suitable person upon each train, to be sworn, to receive and take charge of the mails and of the way-bills accompanying and describing them, and duly deliver the same; and the mail shall be taken from and delivered into the post offices at the ends of the route, and also from and into the intermediate offices on the route, or that may hereafter be established on the route, provided the latter are not over one-quarter of a mile from a depot or station or from the railroad track when no station has been established.

2d. That if the company shall run a regular train of passenger cars more frequently than is required by the contract to carry the mail the same increased frequency shall be given to the mail and without increase of compensation, and the like as to the increased speed of the mail trains, if desired by the Postmaster General.

3d. That the company shall convey free of charge all mail bags and post-office blanks, and also all accredited special agents of the Department on exhibition of their credentials.

4th. That the company shall not by itself nor by its agents transmit nor be concerned in transmitting commercial intelligence more rapidly than by mail, nor carry out of the mail any letters not inclosed in postage-stamped envelopes except such as may have relation solely to some article at the same time conveyed.

5th. That in every case of failure to perform the trip (unless it is shown that the same was not caused by misconduct, neglect, or want of proper skill) there may be a forfeiture of the pay for the trip; and a failure to arrive at the end of the route, so as to lose the connection with a depending mail, shall be considered as equal to a whole trip lost, unless the detention or delay be the result of unavoidable causes.

6th. That the company shall be subject to fine for failure to take or deliver a mail, or any part of a mail; for suffering the mail to be wet or otherwise injured, or lost, or destroyed, unless it shall appear that such failure or other incident as aforesaid was not caused by misconduct, neglect, or want of proper skill on the part of the company or its officers.

7th. That the company shall be answerable for the adequacy of the means of transportation; for the faithfulness, ability, and diligence of its agents, and for the safety, due receipt, and delivery as aforesaid of the mails.

8th. That the company will collect quarterly, if required by the Postmaster General, of postmasters on the route the balances due from them to the United States on their quarterly returns, and

faithfully render an account thereof to the Postmaster General in the settlement of its quarterly accounts, and will pay over to the auditor of the Treasury for the Post Office Department, on the order of the Postmaster General, all balances remaining in its hands.

9th. That the Postmaster General may discontinue or curtail the service, in whole or in part, whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any cause, he allowing, as a full indemnity to the contractor, one month's extra pay on the amount of service dispensed with, and a *pro* — compensation for the amount of service retained and continued.

10th. The said United States covenant with the said company to pay as aforesaid at the rate aforementioned quarterly in the months of November, February, May, and August, or in the preceding months, at the option of the Department:

Provided always, That this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed the twenty-first day of April, in the year one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature; and the said railroad company, by its president and sureties, have hereunto set their hands and seals the day and year set opposite their names respectively.

JOHN A. J. CRESWELL,
Postmaster General.

Signed, sealed, and delivered by the Postmaster General in the presence of—
JNO. B. FORD.

EASTERN RAILROAD COMPANY,
By JNO. WOOLDRIDGE,
President, Sept. 28, 1874.

And by the other parties hereto in the presence of—
AARON OSBORNE,
LOUIS R. EMERY,
Witnesses.

Signed this 28 day of Sep., 1874.
FRANK JONES, [SEAL.]
Signed this 28 day of Sep., 1874.
J. W. JOHNSON, [SEAL.]
Sureties.

II.

The claimant was paid according to the terms of said contract to and including June 30, 1877.

Prior to February 1, 1877, the Postmaster General sent to claimant for each route named in the petition a "railroad-distance circular," and prior to April 16, 1877, a "railroad-weight circular," which were in form as follows:

Railroad-Distance Circular.

U. S. POST OFFICE DEPARTMENT, CONTRACT OFFICE,
WASHINGTON, *November* 27, 1876.

SIR: To obtain accurate information for the use of this Department, with regard to length and location of the Eastern railroad (Portland, Me., to Portsmouth, N. H.), the Postmaster General requests that you will have inserted in the annexed tabular
11 form the following items, viz: In column 1, the distance from station to station; in column 2, a list of all the stations in the order in which they follow each other; in column 3, opposite each station, the official name of the post office at or near such station, and in column 4, opposite each post office, the distance, if any, between the post office and the station. State fractions of a mile by decimals, either tenths or hundredths. Be pleased to have the statement verified by the engineer of the road or other competent officer and returned to this office.

Very respectfully, &c., THOS. J. BRADY,
Second Assistant Postmaster General.

To Samuel C. Lawrence, Esq., pres't Eastern R. R. Co., Boston Mass.

Railroad-Weight Circular.

(Under acts of Congress of 1873, 1875, 1876.)

U. S. POST OFFICE DEPARTMENT,
OFFICE OF SECOND ASSISTANT P. M. GENERAL,
WASHINGTON, —— —, 187-.

SIR: By act of Congress approved March 3, 1873, the Postmaster General is "authorized and directed to readjust the compensation hereafter to be paid for the transportation of mails on railroad routes upon the conditions and at the rates hereinafter mentioned, to wit:

"That the mails shall be conveyed with due frequency and speed; that sufficient and suitable room, fixtures, and furniture, in a car or apartment properly lighted and warmed, shall be provided for route agents to accompany and distribute the mails.

"And that the pay per mile per annum shall not exceed the following rates, namely: On routes carrying their whole lengths an average weight of mails per day of two hundred pounds, fifty dollars; five hundred pounds, seventy-five dollars; one thousand pounds, one hundred dollars; one thousand five hundred pounds, one hundred and twenty-five dollars; two thousand pounds, one hundred and fifty dollars; three thousand five hundred pounds, one hundred and seventy-five dollars; five thousand pounds, two hundred dollars, and twenty-five dollars additional for every additional two thousand pounds, the average weight to be ascertained in every case by the actual weighing of the mails for such a number of successive working days, not less than thirty, at such times after June thirtieth, eighteen hundred and seventy-three, and

not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster General may direct."

By the same act also it is provided "that additional pay may be allowed for every line comprising a daily trip each way of railway post-office cars at a rate not exceeding twenty-five dollars per mile per annum for cars forty feet in length, and thirty dollars per mile per annum for forty-five-feet cars, and forty dollars per mile per annum for fifty-feet cars, and fifty dollars per mile per annum for fifty-five to sixty feet cars: And provided also, That the length of cars required for such post-office railway car service shall be determined by the Post Office Department, and all such cars shall be properly fitted up, furnished, warmed, and lighted for the accommodation of clerks to accompany and distribute the mails."

By act of Congress approved March 3, 1875, the Postmaster General is directed to have the mails weighed "by the employees of the Post Office Department," and to "have the weights stated and verified to him by said employees under such instructions as he may consider just to the Post Office Department and the railroad companies."

By act of Congress approved July 12, 1876, section 1, the Postmaster General is "authorized and directed to readjust the compensation to be paid from and after the first day of July, eighteen hundred and seventy-six, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails ten per centum per annum from the rates fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes,' approved March third, eighteen hundred and seventy-three, for the transportation of mails on the basis of the average weight."

And by section 13 of the act of July 12, 1876, it is directed "that railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct shall receive only eighty per centum of the compensation authorized by this act."

To obtain such a statement as the law requires of the
12 amount of mail matter conveyed employees of the Post Office Department are instructed to weigh all the through mails and way mails which may be conveyed, outward and inward, to and from each station on your road—

Route No. 9, between Portland and Portsmouth, for thirty consecutive working days, commencing on the 16th of April, 1877.

And you are requested to employ some competent person or persons duly sworn to make correct returns to unite with the employees of the Department in the weighing and in the certification of the returns thereof.

The result of the weighing you will please state in the annexed tabular form, placing in column 1 the distance from station to

station; in column 2, a list of the stations, commencing with the first above named—the initial point—proceeding in the order in which the stations follow each other from that point and ending with the last above named—the terminus; in column 3, under the head "Received," the weight of the mails conveyed to each station by trains bound outward; in column 4, under the head "Sent," the weight of the mails conveyed from each station by trains bound outward; in column 5, under the head "Received," the weight of the mails conveyed to each station by trains bound inward, and in column 6, under the head of "Sent," the weight of the mails conveyed from each station by trains bound inward. Trains bound outward are those running from the initial point toward the terminus; trains bound inward are those running from the terminus toward the initial point. Opposite the first station in the list there will be no weight entered in column 3, as there can be no mail conveyed to that station by trains bound outward. Opposite the last station in the list there will be no weight entered in column 4, as there can be no mail conveyed from that station by trains bound outward. Opposite the last station in the list there will be no weight entered in column 5, as there can be no mails conveyed to that station by trains bound inward, and opposite the first station in the list there will be no weight entered in column 6, as there can be no mail conveyed from that station by trains bound inward. The footings of columns 3 and 4 will balance each other, as they will each show the whole amount of mails conveyed over the route by trains bound outward; and the footings of columns 5 and 6 will balance each other, as they will each show the whole amount of mail conveyed over the route by trains bound inward.

A convenient arrangement will be to place a correct scale on each car conveying mails; weigh all through and way-mail matter as it comes on the car at each station, and credit the station with the amount under the head "Sent," outward or inward, as the case may be; weigh all through and way-mail matter again as it is put off the car at each station, charging the station with the amount under the head "Received," outward or inward, as the case may be. Mail matter coming on the route from another route should be credited to the station at which it comes on under the head "Sent," outward or inward, as the case may be; and mail matter passing off the route to another route should be charged to the station at which it passes off under the head "Received," outward or inward, as the case may be. The statement will thus be in the nature of an account kept by the railroad with the stations, in which account the stations will be debited with the amount of mails "Received" off the railroad, and credited with the amount of mails "Sent" on the railroad. Memoranda of the daily weights should be kept and the final results only stated in the printed form.

Careful attention to all the directions above given will save the Department and the company much trouble.

You are requested also to prepare and return herewith a statement showing—

1. The rate of speed (in miles per hour) with which the mails are conveyed on the route.

2. The inside dimensions (in feet and inches), fixtures, and furniture of the car or apartment provided exclusively for railway post-office clerks or route agents to accompany and distribute the mails.

3. The number of times per week the mails are carried in each direction and the number of times they are accompanied by railway post-office clerks or route agents, the run outward from the initial point to the terminus and inward from the terminus to the intial point constituting, together, one time or one round trip. In case more frequent service is performed on one portion of the route than on another a minute description of the frequency on each portion will be necessary.

Some competent officer of your company will certify, under oath, to the accuracy of the statements and return them to this office. The information herein sought is indispensable in order to a proper adjustment of the rate of pay. Please acknowledge the receipt of this circular.

Very respectfully, your obedient servant,

THOS. J. BRADY,
Second Assistant Postmaster General.

The information requested by said circulars was duly furnished.

13 III.

The Postmaster General thereupon, on the 20th of December, 1877, readjusted the compensation to be paid for carrying the mails over each route and transmitted to the Sixth Auditor an order therefor in the following form:

Authorize the auditor of the Treasury for the Post Office Department to pay the Eastern Railroad Company, quarterly, for carrying the mail between —— and —— from July 1, 1877, to June 30, 1881, at the rate of $— per annum (being $— per mile per annum), unless otherwise ordered, subject to fines and deductions.

Dec. 20, 1877.

BRADY.

On the same day, December 20, 1877, the Postmaster General also sent to claimant a circular notice of adjustment of pay for each route in the following form:

POST OFFICE DEPARTMENT, OFFICE OF THE
SECOND ASSISTANT POSTMASTER GENERAL,
WASHINGTON, D. C., *Dec.* 20, 1877.

SIR: The compensation for the transportation of mails, &c., on your road, route ——, between —— and ——, has been fixed from July 1, 1877, to June 30, 1881 (unless otherwise ordered), under acts of March 3, 1873, July 12, 1876, upon returns showing the amount and char-

acter of the service for thirty days, commencing April 16, 1877, at the rate of — per annum, being $— per mile for — miles.

Very respectfully, &c., THOS. J. BRADY,
Second Assistant Postmaster General.

To John Hornby, Esq., master of transportation, Eastern R. R. Co., Boston, Mass.

The compensation so fixed was the maximum authorized by said act of 1873 (R. S., § 4002), as amended by said act of 1876.

IV.

Thereupon the following correspondence took place between the parties on the dates thereto attached:

(Eastern Railroad Company, department of transportation; John Hornby, master transportation.)

BOSTON, *Dec.* 29, 1877.

Hon. Thomas J. Brady, Second As't Postmaster General, Washington, D. C.

DEAR SIR: We beg to acknowledge receipt of twelve (12) inclosures, being the statements of allowance of compensation for carrying the mails on routes 9, Portland to Portsmouth; 1015, Wolfsboro' Junc. to Wolfsboro'; 1016, Portsmouth and Dover; 3001, Boston and Portsmouth; 3002, Boston and West Lynn Depot; 3003, Salem and Rockport; 3004, Salem and Marblehead; 3005, Salem and Lawrence; 3007, East Salisbury and Amesbury; 3008, Wenham and Essex; 3009, Lynn and Marblehead; 3010, Wakefield and Peabody. We have not yet received the notice of adjustment of pay on route 260 (1014 new), Brock's Crossing to North Conway.

Will you kindly inform us of the basis upon which the adjustment is made in the case of routes 9, 3001, 3003, 3004, and 3009.

Respectfully, J. HORNBY, *M. T.*

JANUARY 3, 1878.

SIR: In reply to your favor of the 29th ultimo I beg leave to say that the pay on route 3001, between Boston and Portsmouth, is fixed as follows, viz: For 9,271 pounds per day, $253, less 10 per cent., = $227.70; for two daily lines of railway post-office cars, $50; second daily line of route agents' apartments, $10 = $227.70 + $50 = $277,70 + $10 = $287.70 per mile for 57.28 miles. On route 3003, Salem to Rockport, the pay is fixed for a weight of mails, 265 pounds, with the accompaniments prescribed by law at $55, less 10 per cent.,= $49.50 per mile, for 20.69 miles. On route 3004, between Salem and Marblehead, pay is fixed for a weight of mails of 258
14 pounds per day, at $54, less 10 per cent., = $48.60 per mile, 4.49 miles. On route 3009, between Lynn and Marblehead, the pay is fixed for a weight of mails of 421 pounds per day, at $68, less 10 per cent., = $61.20. On route 9, between Portland and Portsmouth, the pay is fixed for an average weight of mails per day of 7,950 pounds at $236, less 10 per cent., = 212.40, and for two daily

lines of railway post-office cars, $50, making an aggregate pay at $262.40 per mile.

Very respectfully, THOS. J. BRADY,
Second Ass't P. M. Gen'l.

J. Hornby, Esq., master transportation Eastern railroad, Boston, Mass.

BOSTON, *January* 4, 1878.

Hon. Thomas J. Brady, Second As't Postmaster General, Washington, D. C.

DEAR SIR: We are in receipt of notice of adjustment of pay on route 1014, Brock's Crossing to North Conway and return.

Thanks for same.

We are at a loss to know on what basis the adjustment is made on this route (1014), as well as upon routes 9, 3001, 3003, 3004, and 3009, and would feel obliged if you would send us the formula used.

Respectfully, J. HORNBY, *M. T.*

BOSTON, *Jan'y* 8, 1878.

Hon. Thomas J. Brady, Second As't P. M. General, Washington, D. C.

DEAR SIR: Your favor of the 3d instant is at hand, for which we are under obligations.

At page 135, Postal Laws and Regulations, referring to the compensation, it is specified: "On routes carrying their whole length an average weight of mails per day of two hundred pounds, fifty dollars; five hundred pounds, seventy-five dollars; one thousand pounds, one hundred dollars," and so on up to five thousand pounds. We are still at a loss to know the basis on which the compensation is computed upon the excess weight on any one rate.

For instance, how is the rate per mile computed on 9,271 pounds per day, 265 pounds per day, 258 pounds per day.

We see that the law provides for 200 pounds per day, 500 per day, &c., but there is no provision for the fractional parts, which have evidently been considered by you in fixing the compensation.

Would it be troubling you too much to ask the favor of the formula used in the computation?

Respectfully yours, J. HORNBY, *M. T.*

JANUARY 9, 1878.

SIR: In reply to your favor of the 8th instant I beg leave to say that your quotation of the law is correct. You will notice that $25 is allowed for the 300 pounds added to 200 pounds, making $75 for 500 pounds; and $25 for 500 pounds added to 500 pounds, making $100 for 1,000 pounds; and add at the same rate to 2,000 pounds, making $150 for 2,000 pounds; and $25 additional for the next addition of 1,500 pounds, making $175 for 3,500 pounds; and $25 additional for the next 1,500 pounds, making $200 for 5,000 pounds; and $25 additional for each succeeding addition of 2,000 pounds.

If the law were construed literally there would be no allowance for the intermediate weights between 200 and 500 pounds, &c., &c. It has been decided by the law officer, however, that the Department could allow for fractional intermediate weights a *pro rata* of the amount fixed for the whole intermediate weights.

Thus, for 258 pounds per day, the process (in dollars) would be thus: For 200 pounds, $50; for 58 pounds excess, $58 \times 25 = 1{,}450 \div 300 = \$4+$, making $54 per mile, less 10% = $48.60.

For 9,271 pounds, the pay for 5,000 pounds is $200; for the next two additions of 2,000 pounds, $25 each, $50; for the 271 pounds, $271 \times 25 = 6{,}775 \div 2{,}000 = \$3+$, making $2.53 per mile, less 10% = $227.70.

Very respectfully,

THOS. J. BRADY,
Second As't Postmaster General.

John Hornby, Esq., master transportation Eastern R. R., Boston, Mass.

15 BOSTON, *January* 18, 1878.

Hon. Thos. J. Brady, Second As't P. M. Gen'l, Washington D. C.

DEAR SIR: We beg to acknowledge receipt of your favor of 3d inst., containing explanation of the mode in which compensation is fixed on the several routes mentioned.

There seems to be some discrepancy in the matter of the weights as returned to us and as allowed by the Department, and we therefore send you herewith copies of the same as received from the weighers here. The largest difference will be noted on route 3001—weight as allowed by the Department 9,271 pounds per day, as per weighers' returns herewith enclosed 11,121 pounds per day. It may be that we have not the correct method of arriving at the daily average. We have taken the sum of the outward and inward weights divided by the 30 days for the daily average.

Will you kindly instruct us on this point?

Respectfully,

J. HORNBY, *M. T.*

JANUARY 21, 1878.

SIR: Your favor of the 18th instant, with statement of the weight of mails on route 3001, between Boston and Portsmouth, &c., has been received.

In reply I have to say that the calculation made by you does not give the average weight of mails per day carried the whole of the route, as the law requires. It shows the whole weight carried any distance.

The weights returned by you are substantially the same as those upon which the pay is adjusted. The average weight of mails per day carried the whole length of a route cannot be obtained, as you will readily see upon reflection, by the method adopted by you.

A copy of the returns on route 3001 and the process whereby the average weight of mails per day is obtained are sent to you in an-

other envelope by this day's mail. These will enable you to understand the operation without difficulty.

The Department will with pleasure furnish any further information that you may desire.

Very respectfully, THOS. J. BRADY,
Second Ass't P. M. Gen'l.

John Hornby, Esq., master trans. Eastern R. R., Boston, Mass.

V.

The Postmaster General, on the 12th of July, 1878, readjusted the compensation to be paid to the claimant for the transportation of the mails on said routes from July 1, 1878, in accordance with the act of June 17, 1878, ch. 259 (1 Supplement to R. S., 359), and issued orders therefor as to each route in the following form:

Authorize the auditor to decrease the pay of the Eastern Railroad Company for carrying the mails between —— and —— from July 1, 1878, to June 30, 1881, at the rate of — per annum, leaving the pay from that date — per annum (being — per mile), being a reduction of five per centum from the rates fixed for weight of mails in accordance with the act of June 17, 1878.

July 12, 1878.

FRENCH.

On the same day he caused a circular to be sent to the claimant in relation to each route in the following form:

Readjustment of Pay for Mail Service on Railroad Routes under Act of Congress of June 17, 1878.

POST OFFICE DEPARTMENT, OFFICE OF THE
SECOND ASSISTANT POSTMASTER GENERAL,
WASHINGTON, D. C., *July* 12, 1878.

SIR: The act of Congress making appropriations for the service of the Post Office Department for the fiscal year ending June
16 thirtieth, eighteen hundred and seventy-nine, and for other purposes, approved June 17, 1878, contains the following proviso, namely:

"That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the first day of July, eighteen hundred and seventy-eight, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails five per centum per annum from the rates for the transportation of mails on the basis of the average weight fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes,' approved July twelfth, eighteen hundred and seventy-six."

Therefore please take notice that the auditor of the Treasury for this Department has been directed to decrease the pay of your company for the conveyance of the mails on route 9, between Portland and Portsmouth, from July 1, 1878, to June 30, 1881, $558.19 per annum, leaving the pay from the first-named date $13,233.55 per annum, being a reduction of five per centum from the rates fixed for weight of mails in accordance with the provision of the act of June 17, 1878, above quoted.

Very respectfully, your obedient servant,

JNO. L. FRENCH,
Act'g Second Assistant Postmaster General.

To A. P. Rockwell, pres. Eastern R. R. Co., Boston, Mass.

VI.

May 9, 1879, the claimant made the following application:

WASHINGTON, *May* 9, 1879.

Hon. Thos. J. Brady, 2d Ass't P. M. Gen'l.

SIR: In behalf of the Eastern R. R. of Massachusetts I beg to call your attention to the fact that, owing to the greatly increased business on mail service east of Portland, the weight of mails between Portland and Boston is very greatly increased and justice requires that a reweighing of those mails should be ordered.

The same reasons which are mentioned in my letter of this date, showing the necessity of reweighing the mails from Portland to Augusta, on the Maine Central railroad, apply to this service on the Eastern railroad, as the mails go directly from the Maine Central railroad over the Eastern railroad to Boston and the West and South.

In behalf of the Eastern R. R. and at the request of its president I make this application, and ask for a reweighing of the mails on that portion of their service between Portland and Boston.

I am, very respectfully, your ob't serv't,

GEO. E. B. JACKSON.

The Postmaster General, in response to the foregoing request, directed a reweighing of the mails on routes No-. 9 and 3001, which resulted in orders, dated August 26, 1879, considerably increasing the amounts previously ordered, but still 5 per cent. less than they would have been under the order of December 20, 1877, set out in finding III, unaffected by the reduction made by the order of July 12, 1878, set out in finding V.

The orders of August 26, 1879, were in form following:

Modify order of July 12, 1878, ——, so as to pay the Eastern R. R. Co. for mail service between —— and —— from July 1, 1879, to June 30, 1881, at the rate of — per annum, being — per mile for transportation of the mails on —— miles and —— per annum, being $— per mile for use of R. P. O. cars on same distance, all

under act of June 17, 1878, in accordance with new returns and subject to fines and deductions.

Aug. 26, 1879.

HAZEN.

VII.

The claimant carried the mails on all the thirteen routes from July 1, 1877, to June 30, 1881 (both inclusive), and received payment therefor according to the orders of the Postmaster Gen-
17 eral, to wit, from July 1, 1877, to June 30, 1878, according to the orders and notice of December 20, 1877, set out in finding III, and from July 1, 1878, to December 30, 1881, according to said orders as modified by the orders of July 12, 1878, set out in finding VI, and by the order of August 26, 1879, set out in finding VII.

It does not appear that the claimant protested against or objected to the readjustments made by the Postmaster General, as set out in the foregoing findings, nor to the payments made in accordance therewith, before commencement of this action.

VIII.

The difference between the amounts actually paid to the claimant under all of said orders and that which it would be entitled to under the orders of December 20, 1877, set out in finding III, if the subsequent orders making a reduction of 5 per cent. are not binding upon the company, is as follows:

On all the routes from July 1, 1878, to June 30, 1879---	$1,730 36
On routes 9 and 3001 from July 1, 1879, to June 30, 1881-	3,156 10
On the other routes from July 1, 1879, to June 30, 1881--	1,040 10
Total----------	5,926 56

Conclusion of Law.

On the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and the petition must be dismissed.

IV.—*Opinion of the Court.*

RICHARDSON, *J.*, delivered the opinion of the court:

By section 1 of the act of March 3, 1873, ch. 231 (now Revised Statutes, sec. 4002), Congress directed the Postmaster General to readjust the compensation thereafter to be paid for the transportation of mails on railroad routes not to exceed certain rates according to distances and weight, to be ascertained not less frequently than once in every four years, as therein specified.

Thereafter, by written contracts between the parties, one of which is set out in finding I as a form of all of them, dated March 31, 1874, but not executed until September 28, 1874, the claimant corporation, with two sureties, agreed to carry the mails over the thirteen routes

mentioned in the petition, at the prices and upon the terms therein specified, for a period of three and a half years, from July 1, 1874, to June 30, 1877.

By the act of July 12, 1876, ch. 179 (1 Supplement to Rev. Stat., 225, and 19 Stat. L., 78), Congress authorized and directed the Postmaster General to readjust the compensation to be paid from and after July 1, 1876, to all railroad companies for the transportation of mails 10 per centum per annum from the rates fixed and allowed by the previous statute.

Some time during the latter part of the year 1876 or the first part of the year 1877, and before the expiration of said written contract, the Post Office Department, by the usual distance and weight circulars set out in finding II, called upon the claimant for the in-
18 formation necessary to the readjustment of compensation in the manner required by law. This information was duly furnished.

On the 20th of December, 1877, the Postmaster General readjusted the compensation to be paid the claimant from July 1, 1877 (the day following the expiration of the written contract), fixing the amount at the maximum authorized by Revised Statutes, section 4002, reduced 10 per cent. by the act of July 12, 1876. (Supplement to Rev. Stats., 225.) He thereupon issued to the Sixth Auditor an order, and gave the claimant notice in the following form:

Authorize the auditor of the Treasury for the Post Office Department to pay the Eastern Railroad Company quarterly for carrying the mail between —— and —— from July 1, 1877, to June 30, 1881, at the rate of $— per annum (being $— per mile per annum), unless otherwise ordered, subject to fines and deductions.

Dec. 20, 1877.

BRADY.

Of this order notice was immediately given to the claimant as follows:

POST OFFICE DEPARTMENT, OFFICE OF THE
SECOND ASSISTANT POSTMASTER GENERAL,
WASHINGTON, D. C., *Dec.* 20, 1877.

SIR: The compensation for the transportation of mails, &c., on your road, route ——, between ——, has been fixed from July 1, 1877, to June 30, 1881 (unless otherwise ordered), under acts of March 3, 1873, July 12, 1876, upon returns showing the amount and character of the service for thirty days, commencing April 16, 1877, at the rate of $— per annum, being $— per mile for — miles.

Very respectfully, &c., THOS. J. BRADY,
Second Assistant Postmaster General.

To John Hornby, Esq., master of transportation Eastern R. R. Co., Boston, Mass.

Although the act of July, 1876, required the compensation under the readjustment and reduction of 10 per cent. to be from and after

July 1, 1876, the claimant was paid the unreduced rates according to the terms of the written contracts until June 30, 1877, when the contracts expired by their own limitation, and there is no controversy in relation to such payment.

Nor is there any controversy as to payment for the service for the next succeeding year from July 1, 1877, to June 30, 1878, which was made in accordance with the order of December 20, 1877.

But Congress, on the 17th of June, 1878, having authorized and directed the Postmaster General to readjust the compensation to be paid from and after July 1, 1878, for transportation of mails on railroad routes by reducing the same 5 per centum per annum from the rates allowed by the previously existing laws, the Postmaster General gave orders of reduction accordingly for each of the routes in the following form, under date of July 12, 1878:

Authorize the auditor to decrease the pay of the Eastern Railroad Company for carrying the mails between —— and —— from July 1, 1878, to June 30, 1881, at the rate of $— per annum, leaving the pay from that date $— per annum (being $— per mile), being a reduction of five per centum from the rates fixed for weight of mails in accordance with the act of June 17, 1878.

July 12, 1878.

FRENCH.

The claimant was immediately notified of this order, as set out in finding V, and was regularly paid in accordance with its
19 terms from July 1, 1878, to June 30, 1881, without protest or objection until this action was brought, in 1883, so far as it appears by the findings.

The claimant now denies the right of the Postmaster General to make the 5 per cent. deduction from the previously established rates for its service during the three years from July 1, 1878, insisting that at the time of the passage of the act of 1878, and the Postmaster General's order thereunder, it had a contract at the former rates which did not expire until June 30, 1881, and which was not and could not be affected by said act and order, and this action is brought to recover the amount of deduction made thereby.

The cases of the Chicago and Northwestern Railway Company and the Chicago, Milwaukee and Saint Paul Railroad Company *v.* The United States (104 U. S. R., 680, 687) are relied upon as authoritatively settling the law that the reduction acts of 1876 and 1878 were not intended to and did not apply to previously existing time contracts which had not expired when the acts were passed, and this is unquestionably so.

The only question of law involved in the case is, therefore, whether or not the parties were under contract in relation to mail transportation over these routes to June 30, 1881, as alleged by the claimants and denied by the defendants.

Two distinct views are presented on behalf of the claimant, both leading to the same result.

1. It is urged that when on the 1st day of July, 1877, the railroad

company entered upon the service of carrying the mails furnished by the Post Office Department an implied contract arose between the parties that the service should be continued for the term of four years at the rates alleged to have been established and fixed by the act of March 3, 1873, ch. 231, sec. 1 (17 Stat. L., 558, and Revised Statutes, sec. 4002), as amended by the act of 1876, July 12, sec. 1 (Supplement to Rev. Stat., 224, and 19 Stat. L., 79), independently of any other action of the Postmaster General than that of ascertaining the weights and distances mentioned in the statutes.

This view is founded upon the theory that it is to be presumed from the nature of the service and is a proper inference from the language of the acts of Congress. In this we cannot concur.

Section 4002 of the Revised Statutes, from the act of 1873, does not establish an absolute rate of compensation necessarily alike to all railroads for mail transportation, but fixes maximums which are not to be exceeded, leaving the Postmaster General a discretion to make contracts at less rates if he should be able to do so. On that point the language of the section is clear—"the pay per mile shall not exceed the following rates." It is urged that this language is controlled by the preceding words of the section, "The Postmaster General is authorized and directed to readjust the compensation hereafter to be paid for the transportation of mails on railroad routes upon the conditions and at the rates hereinafter mentioned." In our opinion the rates there referred to are any rates which the Postmaster General may contract for, not exceeding those thereinafter mentioned.

While the statutes more than imply that the Postmaster General may make contracts for carrying the mails, they nowhere re-
20 quire such contracts to be for any specific term of time. At most they only prohibit the making of them for more than four years, or other less periods in special cases. (Revised Statutes, secs. 3970, 3943.) That it is not the uniform practice of the Post Office Department to make four years' contracts with railroad companies is shown by the fact that the written contracts of the claimant, which expired just before the time to which the present controversy relates, as set out in finding I, were for three and a half years.

The time-contract system contemplated by the statutes, while it leaves much to the discretion of the Department, is put under many regulations, as to advertising for proposals and other matters, one of the most important of which, if not expressly declared is so recited and implied as perhaps to be obligatory, is the requiring of sureties for the performance of the obligations of contractors. (Rev. Stat., secs. 3945, 3946, 3947, 3951.)

Section 3942 and the previous acts from which that section was drawn relieve the Postmaster General from the duty of advertising for bids when entering into time contracts with railway companies, but in other respects the general statutes apply to railroad companies and other contractors alike.

Whether or not since the passage of that law the Department has made any time contracts with railway companies without sureties we are not informed, but it appears by finding I that the time con-

tracts of the present claimant with the Postmaster General up to the period to which the present controversy relates were in writing and with sureties for the faithful performance of its obligations.

When, therefore, on and after July 1, 1877, the claimant went on performing mail-transportation service like that provided for by the terms of the time contracts, with sureties, which had expired the day previous, we do not think that an implied contract arose by which the Postmaster General agreed to employ the claimant without sureties for the term of four years or for any other period of time. Such an implication would be inconsistent with the spirit, if not the language, of the statutes and with the practice of the Department in putting time contracts in writing and requiring sureties from the contractors for the faithful performance of their obligations.

Much reliance on the part of the claimant is placed upon the opinion of the Supreme Court in the case of Railway Company *v.* United States (101 U. S., 543); but in that case no question was involved as to whether or not there was a contract for a definite period of time. That action was brought by the United States against a railroad company to recover a tax imposed by statute on "every * * * corporation owning * * * any railroad * * * engaged or employed in * * * transporting the mails * * * upon contracts made prior to August 1, 1866." The court say:

No express contract for carrying the mails was proven, but since the service for which the compensation was paid began before August 1 and was continued without interruption for the whole term in question the court below implied a contract prior to that time. This, we think, was right. Had payment been refused and suit brought against the United States in the Court of Claims to recover for the service rendered there could be no doubt about the right to recover, notwithstanding the jurisdiction of that court is confined to suits on contracts (Salomon *v.* United States, 19 Wall., 17); and this not alone because the service had been rendered, but because it is to be presumed that when the company commenced the transportation it had been agreed that payment should be made for what was done.

21 So in this case it is to be presumed that when the company commenced the transportation of the mails, July 1, 1877, it had been agreed that payment should be made for what was done and nothing more. So long as the Postmaster General furnished the mails and the claimant continued to carry them an implied contract existed, which might be terminated at any time by either party. The implied compensation was the reasonable worth of the service, and that might be measured by the previous dealings of the parties for like service and the statutes regulating the same. The maximum rate fixed by statute would no doubt be considered the reasonable and implied compensation until the Postmaster General should make other terms, with the concurrence, express or implied, of the claimant.

On the 12th of July, 1878, the Postmaster General ordered a reduction to be made for service after the first of that month of 5 per cent. from the rates previously paid, in accordance with an act of

Congress passed January 17, 1878. Immediate notice of this order was given to the claimant and no objection was made to it. This order and notice constituted an offer on the part of the Postmaster General which the claimant might decline or accept at his pleasure. Having thereafter continued the service for three years and received the reduced compensation without objection, the company must be held to have accepted the offer of the Postmaster General modifying the previously existing implied contract relations between them.

2. Another view urged for the claimant is that the order of the Postmaster General to the Sixth Auditor of December 20, 1877, with notice thereof to the claimant on the same day, accepted and acted upon by the latter, constituted a written contract for four years from July 1, 1877, to June 30, 1881, binding on both parties; but this is refuted by the language of both the order and notice, wherein, although that period of time is mentioned, it is followed by the significant qualifying words "unless otherwise ordered." It is evident from this phraseology that it was contemplated that the Postmaster General might deem it proper to make changes in the order, either by reducing the compensation below the maximum authorized by statute or otherwise modifying it, and full power was thus reserved for him to do so. It is insisted on behalf of the claimant that the words "unless otherwise ordered" were intended to apply only to the results of reweighing the mails, which might be ordered as frequently as the Postmaster General chose to so direct, and which, under the statute, might necessitate a change in the amount of compensation; but we find no such limitation or restriction in either the order or notice. In the one the words are placed near the end of the order, followed only by the expression "subject to fines and deductions," and in the other, the notice, they stand immediately after the specification of time. In both we think that they apply to all the terms of the written papers.

When the Postmaster General, on the 12th of July, 1878, ordered and gave notice of the proposed reduced rate, as required by the act of June 17, 1878, he did only what he had a right to do by the power reserved to him in his previous papers. In this the claimant silently acquiesced—submitted to it without objection for nearly two years after the whole service had been performed and paid for at the reduced rate.

On the authority of the Chicago and Northwestern Railway
22 Company *v.* United States (104 U. S., 680), it is insisted that the continuance of service without protest or objection by the claimant after notice of the proposed reduction has no bearing on the rights of the parties. We do not think the decision of that case applies to the present controversy. There was a written unexpired time contract between the parties, and neither its existence nor the meaning of its terms was in dispute. The only question at issue was whether Congress and the Postmaster General had the power, under the statute, arbitrarily to reduce the compensation before the expiration of the term of the contract. The Postmaster General, by direction of Congress, notified the company of such reduction, and the latter continued to perform the service thereafter without

objection. The court held that, the company being bound by contract to perform the service until the end of the term, a continuance of such performance after receipt of the notice of reduction was no admission of the validity of the Postmaster General's wrongful act and no acquiescence therein, but was merely performance of its contract obligations, for which it was entitled to the contract compensation. The force and effect of a law of Congress was in controversy, and that was not to be determined by acts of the claimant which were performed in compliance with its contract obligations and not necessarily in acquiescence of the Postmaster General's order.

Here the contract relations of the parties are in dispute and the effect of the statute is not in controversy. The only question involved in this case is whether or not there existed a time contract at all, either by implication or by the proper construction of written papers.

When the extent of an implied contract or the meaning of the language of a written contract are in controversy the intention of the parties becomes all important. Their acts at the beginning and during the term of the contract, acquiesced in on both sides, the claims and construction set up by one party and not denied by the other go very far to explain, if they do not actually establish by way of estoppel, the actual contract between them as well as its proper interpretation. (Otis *v.* The United States, 19 C. Cls. R., 467.)

The present claimant, having no clear and definite time contract, was bound to take notice of the Postmaster General's offer of future compensation, and its acts at the time amount to an acceptance of his offer.

The judgment of the court is that the claimant has no cause of action, and the petition must be dismissed.

23 V.—*Final Judgment of the Court.*

THE EASTERN RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 13967.

At a Court of Claims held in the city of Washington on the 12th day of January, A. D. 1885, judgment was ordered to be entered in the aforesaid cause as follows:

The court, on due consideration of the premises, find for the defendants and do order, adjudge, and decree that the petition of the claimant, The Eastern Railroad Company, be dismissed.

24 VI.—*Application of Claimant for and Allowance of Appeal.*

THE EASTERN RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 13967.

From the judgment rendered in the above-entitled cause on the 12th day of January, A. D. 1885, in favor of the United States the claimant, by its attorney, Samuel M. Lake, makes application for

and gives notice of an appeal to the Supreme Court of the United States.

SAM. M. LAKE,
Attorney for Claimant.

Filed January 21, 1885.

And now, to wit, January 21, 1885, it is ordered by the court that the appeal be allowed as prayed for.

25 In the Court of Claims.

THE EASTERN RAILROAD COMPANY
vs.
THE UNITED STATES.
} No. 13967.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the claimant for the allowance of an appeal to the Supreme Court of the United States, and of the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington city, this 14th day of October, 1885.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims

Endorsed on cover: Court of Claims. No. 134. The Eastern Railroad Company, appellant, *vs.* The United States. Filed October 16, 1885.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1888.

No. 134.

THE EASTERN RAILROAD COMPANY, Appellant,

vs.

THE UNITED STATES.

BRIEF FOR APPELLANT.

Supreme Court of the United States.

THE EASTERN RAILROAD COMPANY, *Appellant*,
v.
THE UNITED STATES.

BRIEF OF CLAIMANT ON APPEAL.

The single question in the case is correctly stated in the opinion of the Court of Claims as, whether the services for which compensation is demanded by the claimant, were rendered under a contract to perform the same continuously for 4 years. In the absence of a formal written contract, stating in express terms the conditions agreed upon, the understanding and agreement of the parties is to be made out from written communications between them, from the nature of the services and from the regulations and practice of the Department in similar cases under a proper construction of the laws governing the postal service.

The conclusion of the Court of Claims admits the existence of a contract, but denies that that contract provided for continuous services for any definite period. That Court says: "So in this case it is to be presumed that when the Company commenced the transportation of the mails, July 1, 1877, it had been agreed that payment should be made for what was done and nothing more. So long as the Posmaster-General furnished the mails, and the claimant continued to carry them, an implied contract existed, which might be terminated at any time by either party." (Record, p. 21.) This statement of the contract does not appear to be quite consistent with itself, for it seems to imply two modes of contracting that are distinguishable from each other. In the first place, it is stated that the contract

merely provided payment for what might be done by the claimant without any obligation on its part to perform any service whatever, and, in the second place, it is stated as a contract that might be dissolved at any time by the act of either party. As a contract terminable by notice from either party, it might bind the claimant to perform until such notice was given, and therefore differs materially from that first stated in the language of the opinion above quoted.

The opinion speaks of the contract as an implied contract, to which statement we do not assent, but, on the contrary, claim that it was an express contract, intentionally made by the parties as such, and that inasmuch as it is to be made out from papers between the parties, such as are spread out in the findings of fact, that it is incorrect to say that it was not a written contract, while it is admitted that it was not a formal written contract.

It is conceded by the opinion, and is beyond dispute, that if the contract was to continue for 4 years, the reduction act of 1878 could not take effect as against such contract under the authority of the case in 104 U. S., 680.

The relations that habitually exist, and that have for many years existed, between the Department and the railway mail carriers, is the prime element of the present question on the familiar principle that the habit of dealing as between certain parties and as it regards a particular business, is primary means of determining contract relations between them, where their contract is not reduced to writing in an undisputed form. So far as these relations are disclosed by the public history of the Government they are open to us.

By a resolution of March 2, 1837, (5 Stat., 193,) provision was made for the system of four years, terms for mail contracts to expire July 1st instead of January 1st. The system of four years terms from July 1st has been maintained from that time to the present, as appears by the annual reports of the Postmaster-General. The area of the country has been divided into four sections, in one of which mail contracts are made in each

year, thus filling up the period of four years. Departures from this regularity have been made in exceptional cases, as where a road has been transferred from one contract division to another, or where other special reasons have existed, but the system has been practically uniform.

Until railroad mail carriage came into use contracts were all made upon competition, and were in writing. In 1838, (3, Stat., 283,) the Postmaster-General was authorized to make contracts for railway mail service at reasonable rates within certain prescribed limits. In 1840, (5 Stat., 314,) the limit for railway mail service was fixed at $300 per mile per annum. In 1845, (5 Stat., 732,) the Postmaster-General was authorized to contract with railroad companies, with or without advertisement, and the railway carriers were divided into three classes, and their compensation graduated according to the quality of the service rendered, the highest rate being $300 per mile per annum. In 1872, (17 Stat., 309,) the laws relating to the postal service were reduced to a system, but the provisions already stated were not materially changed.

In 1873, (17 Stat., ,) the present means of ascertaining the compensation of the railway mail carriers according to a scale allowing a certain amount to a certain weight carried one mile, was adopted. By this act provision is made for the ascertainment of the weight of the mails by a weighing, for not less than thirty successive working days. In 1876, (19 Stat., L., 79,) ten per cent. was deducted from the sums allowed by the act of 1873 to railway carriers.

At the first institution of the railway mail service, the terms of contracts between the Government and railway carriers were habitually fixed by written contracts. Subsequently complaint was made by the railroad companies that the terms of these written contracts were not conformable to the law, and some of the companies declined to execute contracts, while others submitted to the requirements of the Postmaster-General. The number of those companies that declined to sign written contracts steadily increased until, in 1876, the Department aban-

doned the practice of requiring written contracts in such cases. The companies that refused to sign the written contracts still continued to carry the mails, and the arrangements for such carriage were made with each company at regular intervals of four years, precisely as they had been made under written contracts. These arrangements were annually published in the reports of the Postmaster-General, and are there described as contracts of four years' duration. Uniformly, as the end of four years from the commencement of a term of service approached, the Postmaster-General did what was done in the present case, that is, he sent out distance and weight circulars to the companies whose terms were about to expire, to obtain the data for the renewal of the contracts for further terms of four years.

The opinion of the Court of Claims has called attention to the fact that prior to the contract of claimant in suit, a contract in writing existed between the claimant and the Department for the routes in question that appears to be dated March 31, 1874, and terminated June 30, 1877, and endeavors to draw the inference from that fact that there was not that degree of uniformity in the terms of contracts with railway carriers which we allege; but this fact cannot weigh against the evidence afforded by the annual report of the Postmaster-General, and the obvious fact that the operations of so great a department could not be carried on without such regularity as that which we claim to have been employed by the practice of the Department. But the fact is not as the opinion of the Court of Claims takes it to be, for the term of the claimant that preceded the one in question commenced in the year 1873 as appears in the report of the Postmaster-General, and the fact that that contract was not reduced to writing until a large part of the term had expired, cannot be of interest to this Court or of importance to the case.

In view of this uniformity of practice, what must have been the understanding of the parties when the contract was made in 1877? No other conclusion can be drawn than that it was fully

understood that what was then concluded was to last for four years next to come, and as it regards the Postmaster-General that understanding is fuily expressed in his annual report for the year 1881.

While the history of the Department, as disclosed by the reports of the Postmaster-General, shows that the system of time contracts has been maintained with the greatest uniformity from the earliest time, there is nothing to show that such a contract as the Court of Claims has implied has ever been made by the Postmaster-General with any mail carrier. The very essence of presumption is that what has been done habitually is that which is most likely to take place, and as time contracts have habitually been made in cases like the present one, the presumption drawn should be based on that fact. To presume forms of contract foreign to the practice of the service is to violate the principles on which presumptions rest. But not only is the contract, as we state it, conformable to the established system, but it is in harmony with the law and regulations governing the system.

The mode of ascertaining and fixing the compensation of the railway carriers can be applied to a time contract, but cannot be properly applied to either of the forms of contract suggested by the opinion of the Court of Claims. The only compensation that the Postmaster-General is authorized to make for the transportation of the railway mails is an annual sum, and is only appropriate to time contracts, being entirely at variance with such terms of contracts as are suggested by the Court of Claims. The ascertaining of the compensation depends upon the weighing for not less than thirty successive working days during the performance of the service, and such a mode of fixing compensation can have no relation to contracts of the character indicated by the Court of Claims.

The postal system hinges upon a time contract service making provision for the conveyance of the mails for fixed periods of time in the future, and, except in the case of land grant roads, that can only be accomplished by placing the roads under con-

tract obligations to that end. The fact that the time contract is essential to the maintenance of the system must have weight in ascertaining the terms of the present contract. As all the railroads of the country stand in the same relation as that occupied by the claimant, except such as have been aided by grants of public lands, the conclusion of the Court of Claims is equivalent to holding that the services of that vast system of roads in the transportation of the mails is secured by no obligation, but that they may carry the mails or decline so to do at their pleasure, without any responsibility to the Government.

The inspection of the distance and weight circulars, which will be found at pages 8 and 9 of the record, will show that no such contract as that impiied in the conclusions of the Court of Claims was intended by the Postmastrr-General. These were formal instruments which for many years have been employed to obtain the data required to enable the Postmaster-General to contract with railroad companies for the usual terms of four years, and continued to be employed after the execution of written contracts had been abandoned. It is evident, from these instruments, that permanent arrangements for the transportation of the mails were intended by them, placing the transportation of the mails to which they related upon the footing of an obligation of the company to transport them for the usual term of four years. It is equally clear that no such temporary and unstable arrangement as that suggested by the forms of contract implied by the Court of Claims was within the intention of the Department in thus opening negotiations with the railroads.

According to the uniform practice of the Department, these instruments in addition to fixing the terms of contract, were notice that from and after the 1st of July next ensuing the mails would be delivered to the company for transportation for the term succeeding that about to expire without further negotiation or notice. Accordingly the mails were so delivered and carried by the claimant. The services commenced in July, and in December following the Postmaster-General, by a formal order, directed the Auditor to pay the claimant for the

transportation of the mails on the routes in question from July 1st, 1877, to June 30, 1881, in accordance with the provisions of the acts of 1873 and 1876. This order was notified to the claimant. Here is a distinct recognition of the intended duration of the contracts with the claimant. But the Court of Claims attaches importance to the words, "unless otherwise ordered," contained in this order. It does not appear that these orders were peculiar to this case, but, on the contrary, it must be assumed that the form adopted in this case was that employed in all belonging to the same class. Indeed, these words could not well have been omitted, for the effect of the order was to give the claimant a credit with the Auditor for services not yet performed, and which might never be performed, in which case it would be the duty of the Postmaster-General to withdraw the credit. In addition to this the Postmaster-General had authority to increase, decrease, or discontinue the services whenever the public interest demanded it, hence the propriety of the expression used. To give such force to these words as to convert a contract for a fixed period of time into one that may be terminated at any time by either of the parties, is certainly overstraining their force.

The opinion of the Court of Claims in reference to the language just commented upon is as follows: "It is evident from this phraseology that it was contemplated that the Postmaster-General might deem it proper to make changes in the order, either by reducing the compensation below the maximum authorized by statute, or otherwise modifying it, and full power was thus reserved for him to do so." Even if the expression under consideration could bear the construction put on it by the Court, still it must be remembered that it is the language of only one of the parties to the transaction, and not of both, and that it was uttered many months after the service under the contract had commenced, and that no assent to it on the part of the claimant as a modification of the original terms of contract is claimed.

We submit that the construction of the Court of Claims is

forced and without sufficient support. The conclusion must be regarded as conjectural merely, for there is nothing to base it upon. It amounts to this, that the Postmaster-General thereby reserved to himself the right to reduce the compensation of the claimant at any time and to any extent. We do not intend to deny that the Postmaster-General may contract for the performance of railway mail service at lower rates than those fixed by the law, but what we do say is, that when he has once fixed that compensation in the terms of a contract, he has parted with the power to change them, and when he contracts with a company for the carrying of the mails by rail without specifying the rate of compensation, that rate is fixed by reference to the law. To inject into the contract relations of the parties, months after the contract had been made, and after the service had been carried on under it for months, a condition stipulated by one of the parties alone, without the assent of the other, that the rate of compensation may be reduced at the pleasure of the party so stipulating, is certainly a process unknown to the law.

SAM'L M. LAKE,
Attorney for Appellant.

A. J. WILLARD,
Of Counsel

Supreme Court of the United States.

OCTOBER TERM, 1888—No. 134.

——:o:——

THE EASTERN RAILROAD COMPANY, *Appellant*,
vs.
THE UNITED STATES.

——:o:——

BRIEF OF WM. E. EARLE, and JAS. L. PUGH, Jr., *for Appellant.*

The decision of the Court of Claims proceeds upon the theory that there was not really a contract between the plaintiff and defendant, but only a sort of temporary arrangement, alterable and terminable at the will of the defendant in error.

On page 21 of the Opinion is the following language:

"When, therefore, on and after July 1, 1887, the claimant went on performing mail-transportation service like that provided by the terms of the time contracts, with sureties, which had expired the day previous, we do not think that an *implied contract* arose by which the Postmaster-General agreed to employ the claimant without sureties for the term of four years or *for any other period of time.*"

We do not seek to set up an "implied contract" at all, much less upon the ground of a continuance of transportation of the mails under the written contract as we shall directly fully show.

On the same page is the following language also, which as we submit, mistakes our contention and presents a theory of the case unsustained by the facts as found and set out by the Court.

"So in this case it is to be presumed that when the company commenced the transportation of the mails, July 1, 1877, it had

been agreed that payment should be made for what was done and nothing more. So long as the Postmaster-General furnished the mails and the claimant continued to carry them an *implied contract* existed, which might be terminated *at any time by either party*. The implied compensation was the reasonable worth of the service, and that might be measured by the previous dealings of the parties for like service and the statutes regulating the same. The maximum rate fixed by statute would no doubt be considered the reasonable and implied compensation until the Postmaster-General should make other terms, with the concurrence, express or implied, of the claimant."

Our contention is that there was an *express* contract. That both parties necessarily contracted with reference to the law of force applicable to the subject matter which entered into and became a part of the contract. The law is so complete in itself and so clear that it left but little to be done to complete the contract, save to obtain the data and conditions of the particular case to which the law furnished the scale or standard, and when the mere clerical work of doing this was done, and the Postmaster Gsneral announced the result, its acceptance effected a "meeting of minds," a "mutuality of assent" which constituted a perfect and valid contract. Mutual execution of an instrument of writing could have added nothing to its force.

If there was a contract between the plaintiff and defendant for carrying the mails which covered the period for which these deductions were made, then the defendant cannot violate it by arbitrarily reducing the amount to be paid, and this proposition is uneffected by the fact that such a reduction was made in pursuance of an act of Congress, or by an erroneous construction of such an act. There can be no question that the law vested the Postmaster-General with ample authority to make this contract, and the defendant is bound by the contract of an executive officer to the extent of the power actually vested in him.

Lee *v.* Monroe, 7 Cr. 366.
Hunter *v.* U. S., 5 Peters 188.

The acceptance of a proposal which binds the bidder creates

a contract as valid as a formal written one executed by the parties.

Vide Garfielde *v.* U. S., 93 U. S. 242.

This elementary principle is concisely stated in Adams' case, I C. of C. 194.

"The principle on which the case rests is analagous to where one party makes an offer to another by letter. The other party prepares and mails his answer accepting the proposal. From that instant the CONTRACT becomes mutual and binding upon the parties, for *that* was the point of time at which there was a full and distinct accord between them. In whatever form or by whatever solemnities it may afterwards be evidenced, *that* is the time to which its inception and original vitality relate;" and he cites—

1 Parsons on Contracts, 407.

In the case at bar the department sends the plaintiff a "Distance Circular," (II Finding R. p. 8,) with instructions calling for information deemed necessary to fix the rate of compensation required to be done by the statute in force. This data being had, it is followed in logical order by the "Railroad Weight Circular," (II Finding R. p. 8,) to obtain the further data made necessary by the scheme of the statute. When all the information is before the Department in a complete and satisfactory form, the estimates are made up, and a "Circular Notice of Adjustment of Pay," (III Finding R. pp. 11 and 12,) is sent the plaintiff, informing it of the rate of pay per mile per annum for a specified number of miles, which "has been fixed" for four years. The defendant then performs the service—a fact established by the "Certificate of Inspection," (VII Finding R. p. 17.) Surely here is a contract replete with "original vitality."

"A meeting of minds (which) is necessary in the contracting parties," is effected.

Erwin's Case, 11 Court of Claims, 49.

The act of March 3, 1873, (17 S. L., at 558,) provides for increase of compensation to railway companies for transportation of the mails upon a basis of average weight, to be ascertained by an actual weighing for thirty successive working days, and "not less frequently than once in every four years."

This act dispensed with negotiation, because it struck at the root of partiality and favoritism in making these postal contracts, and undertook to establish a uniformity of compensation, based upon the weight of the mails and the "frequency and speed" of their transportation.

And it requires that this actual weighing for thirty successive days shall be made not less than once in every *four* years. The Departmental system of four years contracts in each of the four postal sections of the country was a matter of public notority and of official information, and this four yearly weighing must be presumed to have had reference to the fixed practice and established rules.

Now, not only does the law, in force at the time of the contract, enter into and became a part thereof anyway, but this circular expressly shows that what it did was done with reference to and under these acts; the "Railroad Weight Circular," (*vide* II Finding of Fact, R., p. 8,) expressly states the fact that it is "under Acts of Congress of 1873, 1875 and 1876." Section 4002 of the Revised Statutes (part of this act) shows the elements which made up and the conditions which went into, the fixing of this compensation, and the rates of it. The first paragraph of it fixes the condition "that the mail shall be conveyed with *due* frequency and speed," and the date for fixing them had been furnished in response to the "weight circular."

The second paragraph provides a scale of rates by which the compensation was fixed in proportion to the "average weight of mails per day." Now it was upon these conditions and rates that the Postmaster General was "authorized and directed (by this section) to re-adjust the compensation hereafter to be paid, etc."

It was not to be done capriciously. The Postmaster-General

could not fix it to day at one rate because in a fixing mood, and unfix it to-morrow because a little dispeptic. There were three elements which entered into the basis of compensation, to wit: "frequency," "speed," and "average weight." When fixed it was done by a standard—it was "under the acts," (cited,) and "upon the returns showing the amount and character of the service for thirty days."

The Act of July 12, 1876, (19, S. L., 79,) refers to this as the act "for the transportation of mails on the basis of the *average weight.*" Now this is the same Section of the Act of March 3, 1873, (R. S. 4002,) by which the Postmaster-General is "authorized and directed to re-adjust the compensation." It provides for this weighing "not *less* frequently than once in four years." He could then have *more* frequent weighings either on his own motion or at the instance of the plaintiff. This would change the basis of the scale of rates, and then no one would doubt that the Postmaster-General could re-fix the rate of compensation without impairing the contract—and for the very obvious reason that the rate of compensation being by law fixed by a scale of rates adjustable on the "average weight" of the mails, when the very same Section provides specifically for re-weighing at the will of the Postmaster-General, he was bound to change the rate when the result of such weighing changed the scale. That was a provision of the law which entered into the contract, and it fully explains why, in this circular, the Second Assistant Postmaster-General says "unless otherwise ordered."

It might have been "otherwise ordered" under the law which was part of the contract. A change of "frequency," "speed," or "average weight" would have demanded, as well as warranted a change of rate, but the law does not contemplate such a change at the mere caprice of one party to the contract, and the very words of this circular says it has been fixed, * * * ("unless otherwise ordered,") * * * upon returns showing the amount and character of the service for thirty days."

"The amount and character of the service" was the basis of

the compensation. If these changed then a corresponding one followed in the compensation—not otherwise. "The amount" was assertained by the average result of the weighing, and a new average could be had as often as defendant wanted. "The character of the service" was the "frequency and speed" of the transportation that was to be "due." With his judgment satisfied as to these the Postmaster-General was, with the average weight before him, to fix the compensation according to the margin in the scale of the statute.

In the case at bar there was no change in "the character of the service," and no diminution in the "average weight." No pretense that there was any change in the conditions upon which the circular declares that the pay was fixed. The only pretext for the deduction is, that subsequent appropriation acts prescribe a general deduction of five per cent. from the compensation of railroads for this service.

The true legal meaning and effect of the words "until otherwise ordered" in the circular entitled "Notice of adjustment of pay" cannot be drawn from them excerpted and standing alone. The context must be considered. The circular is addressed to the Master of transportation of the claimant and it advises him that the compensation has been fixed (until "otherwise ordered"—not at all) "from July 1, 1877, to June 30, 1881, (unless otherwise ordered,) under acts of March 3, 1873, July 12, 1876, upon returns showing the amounts and character of the service for thirty days,"

The circular shows that the rate had been fixed by the authority of the act. It states explicitly the condition on which it had been fixed, to wit, "upon returns showing the amount and character of the service for thirty days," as provided by the statute. The statute provided that in fixing this compensation there might be more frequent weighings. Such weighings would change the status or condition if they were had and this would necessarily unfix the rate of compensation, and to this fact the explanitory words "unless otherwise ordered" were an incident merely.

The facts ascertained of distance, weight, speed, &c., the compensation was a matter regulated by law and a mere clerical calculation only was needed.

The Postmaster-General could at his own instance or upon the request of the claimant order a new weighing and if it changed the conditions then another rate of compensation became applicable and the words "unless otherwise ordered" made a refixing of the rate a necessary result under the law. But to say that these words "unless otherwise ordered" left the contract open to be changed either by the Postmaster-General or by the appropriation is to inject into the contract made, not only in pursuance of law, but by the law itself, an element which is destructive to the very nature of the contract.

A fair construction of the acts of 1876 and 1878, making the reduction of the rates fixed and allowed "by act of 1873," for the transportation of mails on the basis of the average weight, does not require any such violent use of the words "unless otherwise ordered," found as they are with the other language, which so fully explains them, in the notice of adjustment. (III Finding, R., p. 11.) Indeed, they have already been construed by this Court. Speaking of them in the Chicago & N. W. Ry. case, (104 U. S. 686,) the Court says: "Their language may be well satisfied by confining them to cases where no time contracts for service were then in existence, and to contracts thereafter to be entered into." They were applied in the Jacksonville, &c., R. R. case, 118 U. S. 628,) because "the service is exacted simply from the obligation growing out of the acceptance of the condition of the land-grant, it rests in the discretion of the Postmaster-General to change the price, from time to time, as in his judgment the public interest may require.

On page 20 of the Record the opinion says:

"That it is not the uniform practice of the Post Office Department to make four years' contracts with railroad companies is shown by the fact that the written contracts of the claimant, which expired just before the time to which the present contro-

versy relates, as set out in Finding I, were for three-and-a-half years."

This statement is literally true, but the conclusion is broader than the induction warrants, as we submit with great deference. The contract of March 31, 1874, set out in Finding I, was "for and during the term beginning January 1, 1874, and ending June 30, 1877." The brief of Messrs. Willard and Lake, fully shows why exceptions were necessarily made of limiting the period of contracts in consequence of their transfer from one section to another of the contract territory, and for other special reasons. For some reason this one was made to terminate on June 30, 1877, instead of January, 1878.

But I do not rely upon this "four year system of contract" further than as an illustration of the policy of that period. I stand on an express contract made by the act of 1873, and the circulars to wit, the "Distance Circular," the "Weight Circular," Circular Notice of Adjustment," issued in pursuance of that act.

On page 20 of the Record the Opinion says:

"While the statutes more than imply that the Postmaster-General may make contracts for carrying the mails, they nowhere require such contracts to be for any specific term of time. At most they only prohibit the making of them for more than four years, or other less periods in special cases. (Revised Statutes, secs. 3970, 3943.)"

This is correct. The Postmaster-General cannot make a contract for a longer period than four years, but "the statutes more than imply that the Postmaster-General may make contracts" for that time, and that is just what we contend that he did here, and it is shown by his "Circular Notice of Adjustment" of December 20, 1877, sent to the Master of Transportation as set out in III Finding of Fact.

I respectfully submit and with great deference to the Court below and of the learned Chief Justice who delivered its opinion that the Findings of the Court taken in connection with the terms and provisions of the act of 1873, clearly show an express

contract for a period of four years, upon the rate or basis of compensation fixed which was alterable only as the conditions might be changed by a re-weighing which should show a variance of the "average weight" unless there should be a change of the "frequency" or the "speed." That inasmuch as there was no change in the conditions specified in the act of 1873, to wit: no modification of the "speed" or of the "frequency," no "re-weighing" to reduce the ascertained "average weight," there was nothing to warrant the arbitrary reduction of the rate of compensation fixed for four years under the acts of 1873 and 1876. That the act of 1878 was intended to apply (which we deny) it was in violation of the contract and nugatory. And if the reduction was made (as we submit it was) upon an erroneous construction of the act of 1878, the claimant is entitled to recover according to the contract the amount of the five per cent. reduction.

Wm. L. Earle,
James L. Pugh, Jr.,
Attys for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE EASTERN RAILROAD COMPANY
v.
THE UNITED STATES. } No. 134.

BRIEF FOR APPELLEE.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE EASTERN RAILROAD COMPANY
v.
THE UNITED STATES. } No. 134.

BRIEF FOR APPELLEE.

The facts of this case are very clearly and in detail set out in the findings of the court on pages 5 to 17 of the transcript. The railroad had several written contracts for carrying the mails on various routes. They were paid under the terms of the contracts for some years, when, under the acts of Congress authorizing and directing the Postmaster-General to readjust the compensation to be paid from and after the 1st day of July, 1876, their compensation was reduced (Transcript, pp. 11, 14, 15).

Claimant road received the compensation under the readjustment without protest or objection (Transcript, p. 17). The claimant denies the right of the Postmaster-General to make the deduction from the previously established

rates, insisting that it had contracts in relation to mail transportation over its routes covering times which could not be affected by the action of the Postmaster-General. The court decided that the claimant was not entitled to recover and dismissed its petition.

In an exhaustive opinion, delivered by Justice Richardson, the contentions of the Government were sustained. This opinion is upon the transcript (pp. 17 to 23), and the appellee asks leave to adopt the same and to respectfully submit the case thereupon.

A. H. GARLAND,
Attorney-General.
ROBERT A. HOWARD,
Assistant Attorney-General.

129-397
129-4164

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

~~No. 332.~~ ~~56~~ 5

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, (LIMITED), APPELLANT,

vs.

THE PHENIX INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 2, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 332.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, (LIMITED), APPELLANT,

vs.

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1 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn on the 27th day of January, in the year of our Lord one thousand eight hundred and eighty-one.

Present: The Hon. Charles L. Benedict, district judge.

THE PHENIX INSURANCE COMPANY, Libellant,

against

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent.

The above-named libellant this day appeared and filed its libel against the above-named respondent, in the words and figures following to wit:

To the Honorable Charles L. Benedict, district judge of the United States for the eastern district of New York:

The libel and complaint of the Phenix Insurance Company against The Liverpool and Great Western Steam Company (Limited) in a cause of action arising from breach of contract, as hereinafter more particularly set forth, alleges and articulately propounds as follows:

First. At all times hereafter mentioned the libellant was and ever since has been and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York for

2 transacting business as insurer, among other things, of maritime risks and adventures, and at all the said times the respondent was and ever since has been and still is a corporation duly organized and existing under and by virtue of the laws of Great Britain and Ireland for the purpose of owning and navigating steamships and conveying passengers and cargo.

Second. The respondent, organized as aforesaid, has for many years past maintained a line of steamers running between the port of New York and the port of Liverpool, and has been and still is a common carrier of passengers and cargo between those ports. The "Montana" was a steamer owned and navigated by the respondents as one of the steamers of said line, and on or about the 2d day of March, 1880, left the port of New York with a cargo of merchandise and a large number of passengers received on board the said steamer by the respondent as a common carrier, to be landed and delivered in the port of Liverpool.

Third. Among such cargo were the following specified lots of merchandise and goods, to wit: A lot of bales of cotton, variously marked, all shipped by or on account of Swanson, Porteous & Co., to their own order, and a lot of bales of cotton, variously marked, all shipped by or on account of Hobart, Smith & Co., to their own order, and 22 boxes of bacon and 4 tierces of hams, shipped by or on account of A. Baxter, agent, to his own order; all of which goods and merchandise were shipped on board the said steamer "Montana" in good order and well conditioned, and the respondent agreed

to deliver the same in like good order and condition at the said port of Liverpool.

Fourth. On information and belief the libellant alleges that said steamer "Montana" sailed from New York as aforesaid, but has failed to deliver the said cargo or any portion of the same as agreed, but, as libellant is informed and believes, the said steamer, during the prosecution of her voyage from New York to Liverpool,
3 stranded on the west coast of Great Britain, at or near Clegyr Point, in Holyhead Bay, and thereby the said lots of cargo became in large measure lost or destroyed and the remainder were greatly damaged.

Fifth. On information and belief, the libellant alleges that at the time of the stranding of the said steamer, and for several hours prior thereto, the weather was foggy and the tide ebb, and that the said steamer was proceeding at a high rate of speed, and without a sufficient lookout, and without making allowance for the influence of the ebb tide, which sets strongly towards the Welsh coast, and without noting and not heeding the course upon which the said steamer was proceeding, which at the time of the stranding, and for a long time prior thereto, was an improper and dangerous course, considering the size of the steamer, the nature of the coast, and the destination of the steamer, and might have been ascertained and known by those in charge of and navigating the said steamer to be an improper and dangerous course if they had noted and heeded the lights and signals from the shore, which they had an opportunity to see and hear, and if the said steamer had been furnished with the usual and proper outfit and appurtenances of an ocean steamer, and if such outfit and appurtenances—among other things, the lead and the compass—had been used, and properly used, by those navigating the said steamer; and the libellant, on information and belief, alleges that there was a failure and neglect on the part of those navigating the said steamer to use and properly use such outfit and appurtenances—among other things, the lead and the compass; but the libellant is not advised whether the said steamer had such outfit or appurtenances in fit condition to use, but charges that she should have had such outfit and appurtenances in such condition.

Sixth. The libellant charges that the stranding of the said steamer and the consequent loss and damage of the said cargo was due to the negligence of those navigating the said steamer in pro-
4 ceeding at too high rate of speed, in not having a sufficient lookout, in going upon an improper and dangerous course, in not making due allowance for the influence of the ebb tide, in not having or in not using and properly using such outfit and appurtenances—among other things, the lead and compass—and in not so heeding the shore lights and signals, as would have indicated to them her dangerous position and would have enabled them to regain and keep in a position of safety.

Seventh. The libellant, before the time of the stranding of the said steamer and the damage or loss of the said goods and merchandise, issued its policies or certificates of insurance on the aforesaid goods and merchandize and to amounts equal to or less than the value of

the said lots of cargo shipped as aforesaid. The said policies or certificates of insurance were issued to or for persons having an interest in the said lots of cargo, respectively, to amounts equal to or greater than the amounts of the insurance made thereon by the libellant, and the losses thereunder were made payable to the insured or their order, and by the loss and damage of the said lots of cargo as aforesaid the libellant, under the said policies or certificates of insurance, has paid or become liable to pay to the insured or their respective orders, as and for the total loss or the damage of the said lots of cargo, a sum of money, equivalent in gold coin of the United States to fifteen thousand dollars and over. The damages of the insured or their assigns from the loss of the said lots of cargo, respectively, were equal to or greater than the amount of the insurance made as aforesaid by the libellant, and the libellant is subrogated to all the rights of the insured or their assigns in the said lots of cargo against the respondent for its failure to carry and deliver the said lots of cargo safely and in good order and condition, as it agreed to do, to the aforesaid amount of over fifteen thousand dollars in gold coin of the United States.

5 Eighth. The respondent is a foreign corporation, as hereinbefore stated, but has officers in this district or property herein, to wit, the steamer "Wisconsin," now lying in the harbor of New York, within the jurisdiction of this honorable court.

Ninth. All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellant prays that process, in due form of law and according to the course and practice of this court in causes of admiralty and maritime jurisdiction, may issue against the said Liverpool and Great Western Steam Company (Limited), citing it to appear, and, in case it cannot be found, then that its goods and chattels be attached to the amount sued for, and that it may be required to answer all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the said amount due for damages to the libellants as aforesaid, with interest and costs, and that it may have such other and further relief in the premises as in justice and law it may be entitled to receive.

BUTLER, STILLMAN & HUBBARD,
Proctors for Libellant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Stephen Crowell, being duly sworn, deposes and says that he is the president of the Phenix Insurance Company; that he has read the foregoing libel and complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to certain matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

STEPHEN CROWELL.

Sworn to before me this 27th day of January, 1881.

DANIEL A. O'CONNELL,
Notary Public, N. Y. Co.

Endorsed: Libel. Filed January 27, 1881.

6 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The answer of the Liverpool and Great Western Steam Company (Limited) to the libel and complaint of the Phenix Insurance Company against the said The Liverpool and Great Western Company (Limited) in a cause of action, as alleged, arising from breach of contract, &c., alleges as follows:

First. That the said The Liverpool and Great Western Steam Company (Limited) has duly appeared herein.

Second. The respondent has no knowledge as to the allegations contained in the first article of the libel, and therefore leaves the libellant to make such proof thereof as it may be advised, except that it admits that the respondent was at the times in said first article of the libel alleged a corporation duly organized and existing under and by virtue of the laws of Great Britain and Ireland for the purpose of owning and navigating steamers, and for the purpose of carrying passengers and cargo, not, however, admitting, but expressly denying that the respondent was a common carrier.

Third. The respondent denies each and every allegation contained in the second article of the libel, except as hereinafter admitted.

Fourth. The respondent denies each and every allegation contained in the third article of the libel, except as hereinafter admitted.

Fifth. The respondent denies each and every allegation contained in the fourth article of the libel, except as hereinafter admitted.

Sixth. It denies each and every allegation contained in the fifth article of the libel, except as hereinafter admitted.

Seventh. It denies each and every allegation contained in the sixth article of the libel.

Eighth. The respondent has no knowledge as to the allega-
7 tions contained in the seventh article of the libel, and therefore leaves the libellant to make such proof thereof as it may be advised.

Ninth. The respondent admits, as alleged in the eighth article of the libel, that it is a foreign corporation, but denies that it had at the times therein alleged or now has any officers in this district, but admits the remaining allegations of the said eighth article of the libel.

Tenth. The respondent denies each and every allegation contained in the ninth article of the libel, except as herein admitted, and except that it admits the jurisdiction of this honorable court.

Eleventh. The respondent, further answering herein, alleges that since the year 1866 it has been the owner of certain steamers plying between the port of New York and the port of Liverpool, and that the steamer "Montana" was a steamer owned and navigated by it; that the home port of the said steamer was at Liverpool aforesaid, where she was registered and where the respondent carried on its business, having an agency, however, in the port of New York; that on the 2d day of March, 1880, said steamer left the port of New York with a cargo of merchandise and a number of passengers to

be transported thereon to the port of Liverpool; that among such cargo was the cargo, or a portion thereof, described in the third article of the libel, and, so far as respondents have information, the said goods and merchandise were received on board of said steamer in apparent external good order and condition; that the said goods and merchandise were delivered by the shippers thereof and received by the respondent under certain bills of lading, copies of which bills of lading are hereto annexed, marked "Schedules," and which said bills of lading were executed and delivered by the respondent to and received by the said shippers, and to which said bills of lading the respondent craves leave to refer, and to make the same a part of this its answer as constituting the contract between the shippers of said goods on the one hand and the respondent on
8 the other; and the said respondent respectfully alleges that it assumed no greater risks and responsibilities than are expressed in said bills of lading in respect of the said goods and merchandise or to any one having any interest therein.

Twelfth. The respondent alleges that on the voyage of said steamer from New York to Liverpool the said goods and merchandise, or a portion thereof, became lost or damaged by perils of the sea and causes from which the said respondent was exempt by law, and the said bills of lading or contract of affreightment under which said goods had, as aforesaid, been delivered and received by said the respondent.

Thirteenth. The respondent, further answering, alleges that at and previous to the time of the accident mentioned in the libel the said steamer "Montana" was staunch and strong and well and sufficiently equipped and manned, and under the command of an experienced and duly licensed master; that the said master was on the bridge and a double lookout was properly placed and stationed, and that there was an officer of the deck, all of whom were carefully attending to their respective duties.

That the said steamer left Queenstown on March 12th, 1880, at about 2.15 p. m., on her voyage to Liverpool from New York; that the course of the steamer from Tuska was, as indicated by the steamer's standard compass, corrected, north 42 degrees E., as hereinafter mentioned; that the steamer reached the vicinity of Tuska about eight o'clock of the same evening, and it was expected to pass the South Stack light, situated on the Welsh coast, about 2 o'clock the following morning. The tide was about high in the channel, about midnight, so that from Tuska to the South Stack light the steamer would have about four hours flood and two hours ebb tide, and consequently the effect of the tide was such as to set the vessel more towards the Irish coast than the Welsh coast, which, as the steamer passed abreast of the South Arkalow light, situated
9 on the Irish coast, about 9.45 p. m., was found to be the case.

That the weather was clear on the water and lights visible; that the South Stack light, situated on the coast of Wales, was reported about 1.20 o'clock a. m., bearing about southeast by east, and distant, as near as could be judged, about fifteen miles; that light was

then carefully observed by the said master and the second officer, who were on the bridge at the time, through their glasses, and they concluded that the position of the steamer was then in mid-channel and they were in full range of that light, which appeared to be just dipping. All this indicated that the flood tide had set the steamer well over towards the Irish coast. Up to this time the night was clear and the lights of passing vessels could be seen two or three miles. When the South Stack light was about a point abaft the beam, and the master and second officer still calculating that the steamer was about fifteen miles away from it, that light disappeared, as judged, below the horizon, and the course of the steamer was altered to due east, so as to come within the range of the Skerries light, situated on the Welsh coast, as it was thought the steamer was so far out that it might not be seen. After running on such east course five minutes a gun was heard on the starboard quarter; that the course of the steamer was immediately altered back to her original course, northeast ¾ north, and the engines slowed, as it was then, for the first —, thought there might be a fog on the land, although it could not be seen. After running on the said course for about half an hour, and expecting every moment to see the Skerries light on the starboard side, about 2.45 a. m., something which appeared to be a fog bank was observed on the starboard bow, and the engines were immediately ordered full speed astern, which order was promptly obeyed, but before the engines could be stopped the steamer went ashore in Church Bay on the coast of Wales, the steamer having very little headway at the time.

10 That in consequence of such stranding the said cargo mentioned in the libel, or a portion thereof, was either damaged or lost.

Fourteenth. And the respondent respectfully alleges in respect to the premises that in so far as the employment of a skilled and licensed master and officers of said vessel, and in respect to the careful observation by them of the elements and everything which would, in the exercise of ordinary human skill, enable them to determine and judge the position of the vessel and to navigate her accordingly, and in respect to the seaworthiness and outfit of said steamer, and in respect of everything within the reasonable limits of skill and foresight, it has fully complied with all the requirements of its contract of affreightment regarding the goods and merchandise mentioned in the libel, and with all the requirements of law in such cases.

Fifteenth. That all and singular the premises are true.

Wherefore the respondent prays that the libel be dismissed with costs.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William H. Guion, Jr., being duly sworn, says that he has read the foregoing answer and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true. Deponent further says that the reason this

verification is made by him and not by the respondent is that it is a foreign corporation and deponent is the agent thereof.

WM. H. GUION, JR.

Sworn to before me this 21 day of March, 1881.

WM. H. RAFTERY,
Notary Public, N. Y. Co.

BEEBE, WILCOX & HOBBS, *Proctors.*
BEEBE, *Advocate.*

Endorsed: Answer. Filed March 22, 1881.

11 Shipped, in good order and well conditioned, by Arch'd Baxter, agent, in and upon the steamship called Montana, now lying in the port of New York and bound for Liverpool, via Queenstown, twenty-two boxes bacon and four tcs. hams, being marked and numbered as in the margin, and are to be delivered from the ship's deck, where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of Liverpool—

GUION LINE
United States Mail Steamers.

NEW YORK: 29 Broadway. LIVERPOOL: 11 Rumford St.

B. 22 boxes bacon.
4 tierces ham.
—
26 Packages.

T cwt. 5.16.0.0 at 30⅄ per ton.....£8.14.0
Primage..... 8.9
Total.....£9. 2.9

(The act of God, the Queen's enemies, pirates, robbers, thieves, vermin, barratry of master, or mariners, restraint of princes, rulers, or people, loss or damage resulting from insufficiency in strength of packages, from sweating, leakage, breakage, or from stowage or contact with other goods, or from any of the following perils (whether arising from the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise howsoever) excepted, namely, risk of craft, explosion or fire at sea in craft, or on shore, boilers, steam, or machinery, or from the consequences of any damage or injury thereto, howsoever such damage or injury may be caused, collision, stranding, or other peril of the seas, rivers, or navigation of whatever nature or kind soever, and howsoever such collision, stranding, or other peril may be caused, with liberty, in the event of the said steamer putting back to New York, or into any port, or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods by any other steamer, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations)—

unto order or to assigns, freight for the said goods being paid immediately on landing, without any allowance of credit or discount, at the rate of thirty shillings sterling p. ton of 2,240 lbs., gross weight, delivered, with customary primage and general average, if any, according to York-Antwerp rules.

Weight, measure, contents, quality, brand, and value unknown. The goods to be taken from alongside by the consignee, immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The collector of the port is hereby authorized to grant a general order for discharge immedi-

ately after the entry of the ship. The master porterage of the delivery of the cargo to be done by the consignees of the ship, and the expense thereof to be paid by the receivers of cargo. The owners of the ship will not be responsible for money, documents, gold, silver, bullions, specie, jewelry, precious stones or metals, paintings, and statuary, unless bills of lading are signed therefor and the value thereof therein expressed.

In accepting this bill of lading the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed.

In witness whereof the agents of the said ship hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in New York, March 1st, 1880.

12, 13, 14 See Bills of Lading inserted.

15 At a stated term of the district court of the United States of America for the eastern district of New York, on the 8th day of November, A. D. 1882.

Present: Hon. Chas. L. Benedict, district judge.

THE PHENIX INSURANCE COMPANY, Libellant,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, Respondent.

Cause called; hearing ordered.

Appearances: Messrs. Thos. L. Stillman and W. Mynderse, for libellants; Messrs. Welcome R. Beebe & F. A. Wilcox, for respondent.

Mr. Mynderse reads libel; Mr. Wilcox reads answer.

Testimony taken and depositions read and hearing continued to the 10th, 13th, and 14th.

MAY 4th, 1883.

Hearing resumed; same appearances.

Cause argued and submitted.

16 *Opinion. June* 29, 1883.

BENEDICT, *J.:*

These actions are to recover the value of goods shipped on the steamship Montana, in New York, to be transported therein to Liverpool, and destroyed by the stranding of the steamer at Church Bay, on the Welsh coast, in March, 1880. The goods were insured by the several corporations who bring these suits, and, the loss having been paid by the insurers, they now seek to recover of the owners of the steamer the amounts so paid by them, respectively. Their claim rests upon the proposition that the stranding of the steamer and consequent loss of the goods insured was caused by the negligence of the master of the steamer, who was at the time responsible for her navigation.

On the part of the defendants the right of the libellants to recover is disputed upon several grounds:

First. It is said that the facts proved do not make out a case where the insurers are subrogated to the rights of the owners of the goods, and therefore no recovery can be had in these actions; but, in my opinion, the testimony is clearly sufficient to bring these cases
17 within the settled rule, and entitles the libellants to enforce against the owners of this steamer any right which accrued to the owners of the goods by reason of the bills of lading and subsequent loss of the property shipped.

Next, it is said in behalf of the defendants that their liability upon these bills of lading must be determined by the laws of England; but the undisputed facts show that there is no ground for such a contention.

Next, it is contended, and with much apparent earnestness, that the law of this country permits no recovery, because of the fact that the bills of lading sued on provide for exemption from liability for losses caused by the negligence of the defendant's servants; but this court is bound by authority to hold such a provision in the con-

tract of a common carrier to be null and void. Upon this point the decision of the Supreme Court of the United States in Railroad Co. *v.* Lockwood, 17 Wall., 357, in my opinion, controls the present case. The only distinction between Railroad Co. *v.* Lockwood and the present case is that here the contract is a bill of lading for goods shipped on a vessel, while the contract passed on in Railroad Co. *v.* Lockwood was for the transportation of a passenger, and by railroad. I am unable to see that this distinction creates a difference between the cases. The defendants here were common carriers, and the reasons for the rule declared by the Supreme Court in Railroad Co. *v.* Lockwood appear to me to apply with full force to a contract for the carriage of goods in a ship; but, if this court be not bound by the decision of the Supreme Court in the case referred to, it is controlled on this occasion by decisions, in cases precisely similar to the present, which have been made by this court, and by the circuit court in this circuit. See The City of Norwich, 3 Ben., 575; Nelson *v.* National S. S. Co., 7 Ben., 341; The Colon, 9 Ben., 354; The Hindoo, 1 Fed. Rep., 627; The Powhatan, 5 Fed. Rep., 376, and 12 Fed. Rep., 876. It would be a waste of time, therefore, to follow the elaborate argument that has been presented in regard to the effect to be given to the provisions of the bills of lading under which the goods in question were transported.

My decision of this case must turn, not upon any question as to the form of the contract, but upon a question of navigation, and I am required to say whether the stranding of this steamer was caused by a failure on the part of the master to use reasonable care and skill in the navigation of his ship.

The decision of this question may well be approached with solicitude, but it is not seen that it involves an inquiry different in character from the inquiry so often forced upon the attention of courts of admiralty in cases of collisions of ships.

Upon this inquiry I enter with the remark that, inasmuch as the bills of lading sued on contain an exemption from liability for loss caused by stranding, I consider the libellants bound to prove that the cause of the stranding was negligence of the master. It will not be sufficient to show an error of judgment on the part of the master, either in selecting one of two courses open to be pursued by him, or in coming to one rather than another of two conclusions possible to be drawn from the facts as known, or as they ought to have been known, by him. He must be proved to have displayed a want of reasonable care and skill in view of the facts as they appeared, or ought to have appeared, to him.

Moreover, the liability of the defendants will be determined upon the testimony of the master himself, who is produced as a witness by the defendants, and neither he nor they can complain if his statement of what was done and the attending circumstances be made the basis of my decree.

The master's statement is, in substance, as follows: That, bound up the Irish channel, when Tuskar light was about abeam some four miles away, he put the steamer upon a course N. 42

19 deg. E. On that course, South Arklow light, upon the Irish coast, ought not to have been seen, but was seen plainly. From this circumstance the master, as he says, judged that the flood tide then running was carrying him to west of his proper course; but, nevertheless, he made no change. He passed North Arklow light without seeing it, and made no other light until he made the South Stack light. This light, which should have been made when bearing E. N. E., and about 20 miles away, was made bearing S. E. by E., one point forward of his beam. That, he says, he held in sight for an hour, during which time he ran at full speed, and without change of course; that at 1.45 the light was abeam, and about 2 o'clock the bearing of the light had changed two points; and then the light was lost, bearing at the time one point abaft his beam. The master further says that the night was clear, and the South Stack light appeared to be dipping upon the horizon, from which circumstance he judged himself to be 15 miles away from it; and that, acting upon that assumption, when he lost the light, not having made the Skerries light, he changed his course from N. 42 deg. E. to E. ¾ S. On the latter course, he says, he ran five minutes at half speed, when, while running E. ¾ S., he heard the North Stack gun on his starboard quarter. He immediately altered the course of the steamer to N. 42 deg. E., and on that course ran slow for about 15 minutes (the answer says about half an hour), when the steamer brought up on the shore in Church Bay, in a thick fog, without giving him time, after discovering the shore, to reverse his engines.

That this account as given by the master and presented to the court for its consideration by the defendants is untrue in important particulars cannot be doubted.

The place where the steamer stranded is fixed. It is in Holyhead Bay, east of the Skerries and east of the North Stack. If, as the master says, and as is not doubted, the steamer was run-
20 ning upon a course N. 42 deg. E., when the shore in Church Bay was made ahead, it cannot be true, as the master and also the answer says, that he ran five minutes at slow speed upon the east course, for upon such a course she would not have cleared the South Stack, and would have run over the land. No explanation of this statement of the master in regard to the length of time he held his easterly course has been given. He was running his vessel directly towards a dangerous coast. He was himself upon the bridge. His position was in doubt, and it is difficult to believe that he did not note the exact time of his running to the eastward. If he did not note the time, it was incumbent upon him to state it truly, and he has not done so. If, under the circumstances, he ran E. ¾ S. without noting the time, he was guilty of gross negligence.

Again, the result leaves no room to doubt that the steamer, instead of passing the South Stack at a distance of 15 miles, as the master says he at the time supposed, in fact passed the South Stack close at hand. The master now concedes such to have been the fact. How, then, can the master's statement be accounted for, when he says in positive terms that he had the South Stack in sight about an hour; that he examined it with glasses and timed its revolutions;

and that, while running for this hour at full speed on a course N. 42 deg. E., the bearing of the light changed but two points, namely, from one point abaft to one point forward of his beam? If he saw the South Stack light at all, he must have seen it close at hand, for the result proves that he passed it close at hand. If he had seen the light, as he says he did, he would have passed it some 20 miles away.

If he never saw that light, why does he swear not only that he saw it, but examined it with a glass, and timed its revolutions by his watch, and knew at the time that it was the South Stack light, and observed that its bearing changed but two points while running an hour.

21 Still again, the master marks upon the chart the point at which he changed his course from N. 42 deg. E. to E. ¾ S., when, as he says, he lost the South Stack light. At that point the South Stack light and the Skerries light should have been in full view, as his chart told him, and he lost the South Stack without having made the Skerries light; yet he says it was clear where he was, and it did not occur to him to consider that the lights might be obscured by fog. No explanation of this failure to know what the surrounding circumstances, as he narrates them, were proclaiming—namely, that there was fog on the shore—has been given; nor has any modification of the testimony of the master been made, although the defendants have had time and opportunity to correct his testimony if they had desired.

Still again, when the master, according to his statement, lost the South Stack light, two conclusions were, perhaps, possible to be drawn from the fact—one, that he lost it because he had been carried so far to west by the tide; the other, that fog had shut out the light from him. Without using his lead he acted upon the assumption that he was too far to the west, and so ran his vessel on shore. His excuse for not using the lead is that there was nothing in the circumstances to lead him to believe that he was near the east shore, or that the lead would disclose his true position; but the fact stated by him that he lost the South Stack light and had not made the Skerries light, when both those lights should have been visible if he was where he supposed himself to be, should have raised a doubt as to the correctness of his assumption that he had been carried by the tide several miles to west of his true course, and made it incumbent on him, in the exercise of reasonable care, to heave the lead at the time he changed his course to east. He was bound to suppose it possible that he was mistaken as to his position, and equally possible that his failure to make the lights was because of a

22 fog, and not because of distance from the Welsh coast. He was bound to know that the lead would tell him whether he was where he supposed himself to be, or near the Welsh coast, and the result shows that if the lead had been used it would have told him, and at once corrected his erroneous and unfounded assumption that it was 15 miles west of the South Stack light.

Still again, the master says that the weather was entirely clear about him, and he had no suspicion that fog was obscuring the lights

until, when on the E. ¾ S. course, he heard the North Stack gun on his starboard quarter. But the fact that neither the South Stack light nor the Skerries light was visible to him while on the E. ¾ S. course was loudly proclaiming the presence of fog, and yet the master, according to his own statement, navigated his vessel up to the time of his hearing the North Stack gun as if there was no fog, and without any regard whatever to the warnings of fog plainly given by the circumstances as they are narrated by him.

It should, perhaps, be remarked here that doubt is cast upon the master's statement that he never thought of the presence of fog by the fact proved by other witnesses for the steamer, that the lookouts were doubled and the whistles blown, as also doubt is cast upon the statement that he ran at half speed on the easterly course and slow after again changing to N. 42 deg. E. by the testimony of the engineer that the engines went at full speed until just as the steamer struck. But I judge him by what he says, and he says most earnestly that he had no suspicion of the presence of fog about the lights until he heard the North Stack gun.

Lastly, the master says that while running E. ¾ S. he heard the North Stack gun; that he concluded from the sound that the gun was abaft his beam; that he at once changed his course from
23 E. ¾ S. to N. 42 deg. E., and proceeded slow some 15 minutes, until he brought up on the shore at Church Bay.

The position of the North Stack is fixed, and the point where the vessel stranded is also fixed, and these positions show that when the master changed his course from E. ¾ S. to N. 42 deg. E. he was east of the North Stack gun and in Holyhead Bay. If the master, at the time he abandoned his easterly course, knew that he was east of the North Stack and in Holyhead Bay, it was a gross mistake in navigation for him to take and hold a course N. 42 deg. E., as he did after hearing the gun; and we have his own word for the fact that at the time when, upon hearing the gun, he abandoned his easterly course for the course N. 42 deg. E., he knew that the North Stack was abaft his beam on the starboard quarter, as in fact it was.

Upon the master's own showing, therefore, it is impossible to conclude otherwise than that he conspicuously failed to use reasonable care and skill in navigating his vessel upon hearing the North Stack gun, and that the loss in question was the immediate result of his negligence in that particular.

The only suggestion made in regard to this aspect of the case is that the master, when he heard the sound of the North Stack gun, could not have been sure of its bearing; but the difficulty with this suggestion is that the master repeatedly swears that when he heard the gun he knew that it was the North Stack gun, and that he did conclude that the gun was abaft his beam, as in fact it was. Upon the facts as they were, it was great negligence to take and hold a course N. 42 deg. E. after the North Stack gun was heard, and the master swears that he understood the facts to be as in truth they were. How is it possible, then, to absolve him from the charge of having run his ship ashore by failing to exercise reasonable care in her navigation? It is to be remarked in this connection that the

fact that the master, when he changed from E. ¾ S. to N. 42
24 deg. E., knew that he was in Holyhead Bay and east of the North Stack, is fixed beyond dispute by the statement in the defendant's answer, where it is said "After running on such east course five minutes a gun was heard on the starboard quarter."

My conclusion, therefore, is that the proofs show that the loss of the goods in question was caused, not by a mere error of judgment on the part of the master of the steamer Montana, but by a failure to exercise reasonable care and skill in the navigation of his ship.

The liability of the defendants follows, of course. Let decrees be entered in favor of the libellants, with an order of reference to ascertain the amount of the loss.

25 Filed and entered the 13th day of February, 1884.

At a stated term of the district court of the United States for the eastern district of New York, held at the court-rooms, in the city of Brooklyn, on the 19th day of February, 1884.

Present: Hon. Charles L. Benedict, district judge.

THE PHENIX INSURANCE COMPANY, Libellant,

against

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent.

This cause having been tried before Hon. Charles L. Benedict on the 8th, 9th, 10th, 13th, and 14th days of November, 1882, on the pleadings and proofs, and the same having been submitted on the arguments and briefs of the respective parties, and the court having rendered a decision in favor of the libellant and against the respondent for the damages sustained by it, and costs, and an interlocutory decree having been made and entered herein, on the 30th day of June, 1883, adjudging that the libellants recover its damages sustained by reason of the facts set forth in the libel herein, with its costs, and ordering a reference to B. Lincoln Benedict, commissioner, to ascertain and report the amount of said damages, and the report of the said commissioner having been filed herein on the 8th day of August, 1883, whereby he reported that there is due to the libellant for the damages sustained by it herein the sum of thirteen
26 thousand two hundred and thirty-seven $\frac{64}{100}$ ($13,237.64) dollars, with interest thereon to August 8th, 1883, amounting to two thousand one hundred and ninety-four $\frac{84}{100}$ ($2,194.84) dollars, amounting in all to the sum of fifteen thousand four hundred and thirty-two $\frac{48}{100}$ ($15,432.48) dollars, and exceptions having been unduly filed to said report by the respondent, which said exceptions were stricken from the records of the court by an order made and entered herein on the 13th day of February, 1884, it is now by the court—

Ordered, adjudged, and decreed that the said report be, and the same hereby is, in all things confirmed, and that the Phenix Insurance Company, the libellant herein, recover from the Liverpool and Great Western Company (Limited), the respondent herein, the said

sum of fifteen thousand four hundred and thirty-two $\frac{48}{100}$ ($15,432.48) dollars, with interest on the principal sum thereof, to wit, thirteen thousand two hundred and thirty-seven $\frac{64}{100}$ ($13,237.64) dollars from the 8th day of August, 1883, amounting to the further sum of four hundred and nineteen $\frac{18}{100}$ ($419.18) dollars, and with its costs, taxed at the sum of two hundred and eleven $\frac{68}{100}$ ($211.68) dollars, amounting in all to the sum of sixteen thousand and sixty-three $\frac{34}{100}$ ($16,063.34) dollars; and it is further

Ordered, adjudged, and decreed that a summary judgment be, and the same hereby is, entered in favor of the Phenix Insurance Company against the Liverpool and Great Western Steam Company (Limited) for the said sum of sixteen thousand and sixty-three $\frac{34}{100}$ ($16,063.34) dollars; and it is further

Ordered, adjudged, and decreed that unless this decree be satisfied or an appeal be taken within the time provided by law and the rules and practice of this court, then that the libellant have execution hereon against the said Liverpool and Great Western Steam Company (Limited) to satisfy this decree, and that the Liverpool and
27 Great Western Steam Company (Limited) and William H. Guion, the respondent's stipulator for costs, and William H. Guion and Sidney Dillon, and the Liverpool and Great Western Steam Company (Limited), the respondent's stipulators for value, within ten days from the date of service of a copy of this decree upon the proctors for the respondent, cause the engagements of their stipulations to be performed or show cause within four days after the expiration of the said ten days, or on the first day of jurisdiction thereafter, why summary judgment for the amount of said stipulation should not be entered against them, their goods, chattels, and lands.

CHAS. L. BENEDICT.

Endorsed: Final decree. Filed and entered the 19th day of February, 1884.

28 At a stated term of the circuit court of the United States for the eastern district of New York, in the second circuit, on the 1st day of July, A. D. 1884.

Present: Hon. Mr. Justice Blatchford, associate justice.

Hearing on Appeal.

THE PHENIX INSURANCE COMPANY, Libellant and Appellee,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent and Appellant.

Cause called. Ready. Hearing ordered.

F. A. Wilcox, E'qr., for the respondent and appellant; William Allen Butler, E'qr., and Thos. E. Stillman, E'qr., for appellee.

Counsel for appellee reads libel.

" " appellant " answer.

Testimony and depositions taken in district court put in evidence.

Hearing suspended to July 2, 1884.

JULY 2, 1884.

Hearing resumed. Same appearances.
Cause argued and submitted on briefs.
Findings of fact and conclusions of law submitted.

29 Circuit Court of the United States for the Eastern District of New York.

THE PHENIX INSURANCE COMPANY
vs.
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

In this case I find the following facts:

The respondent, The Liverpool and Great Western Steam Company (Limited), is a corporation organized under the laws of Great Britain, and, in the month of March, 1880, and for a long time prior thereto, was the owner of the steamer Montana. The libellant, The Phenix Insurance Company, has been for many years, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of New York for transacting the business of insurance, including marine risks. During said time it had an agency in Liverpool, England, for the adjustment and settlement of losses, and the losses referred to herein were adjusted by such agency, and were paid by it in Liver-
30 pool. The Montana was an ocean steamer, built of iron, and performed regular service as a common carrier of merchandise and passengers between the ports of Liverpool, England, and New York in the line commonly known as the Guion Line. By her, and by other ships in that line, the respondent was such common carrier. On the 2d of March, 1880, the Montana left the port of New York, on one of her regular voyages, bound for Liverpool, England, with a full cargo, consisting of about twenty-four hundred tons of merchandise, and with passengers. She stopped at Queenstown in the afternoon of the 12th of March, and thence proceeded on her voyage. She passed Tuskar rock, on the extreme southeastern portion of Ireland, at about eight o'clock in the evening of the 12th of March, and thence took a course up and across the Irish Channel. The course she took would ordinarily have carried her outside of the range of the South Arklow light, which is a light on the east coast of Ireland, but, with the wind, tides, and currents as they were that night, she passed within range of that light, and about nine miles off, at 9.45 p. m. On passing the South Arklow light,
31 the next light which those in charge of the navigation of the Montana expected to make was the South Stack light, on the coast of Wales, at the entrance of Holyhead Bay. The master of the Montana was on the bridge and in charge of her navigation. The light-house on South Stack carried two lights. One, the high light, was about 170 feet above high water. It was white in color, and exhibited in all directions at sea, with a range of from twenty to thirty miles, in clear weather. It was a revolving light, making one complete revolution in six minutes, and it showed a white flash light every minute. The other light was also white. It was about 40 feet

above high water, and was a semi-revolving light, exhibiting every minute and a half in all directions between east northeast and west by north. Its range in clear weather was from three to four miles, but it was regularly lit only in foggy or thick weather. Both of these lights were lit and burning all through the night of March 12th. A fog-bell was regularly sounded at South Stack from ten o'clock in the night of March 12th until six o'clock in the morning of March 13th. The bell weighed two and a quarter tons, and was operated upon by a hammer weighing about ninety-six pounds,
32 which struck the bell on the outside at intervals of fifteen seconds, and was worked by means of clock-work and a caloric engine. The sound was a powerful one, and its range was from three to four miles. The high light on the South Stack was established in 1809, and has ever since been regularly maintained. The fog-bell had been established for about twenty years, and has since then been regularly sounded in foggy weather. About east northeast, magnetic, from South Stack, and distant about one mile therefrom, was a fog-gun station, known as North Stack. This fog-gun station had been established about twenty years, and from midnight of March 12th until four o'clock in the morning of March 13th the fog-gun was fired regularly every ten minutes. The gun was a twenty-four pounder, and was each time charged with three pounds of powder, and a large junk wad to give extra sound, the range of the sound being between five and six miles when the fog was thick, with the wind, and about seven miles when the fog lifted. The fog-gun station, since it was established, has been regularly maintained and the fog-gun fired regularly in foggy weather. About two
33 miles east, magnetic, from North Stack was the Holyhead Breakwater light-house. This light-house was at the outer end of Holyhead breakwater, and it carried a fixed red light at a height of from sixty to seventy feet above high water, with flashes every seven and one-half seconds. The range of the light in clear weather was from three to four miles, and the range of the flash was about fourteen miles. The light was established in 1873, and has since then been regularly maintained. At the breakwater light-house was a fog-bell, weighing about five hundred weight, which was operated upon by two hammers worked by clock-work and striking the bell on the outside three times in quick succession at intervals of fifteen seconds. The range of the sound was from a mile and a half to two miles. The bell was established in 1873, and was regularly rung in foggy weather. It was in operation from midnight of the 12th of March until five o'clock in the morning of the 13th March. About five miles north northeast, magnetic, from Holyhead Breakwater light-house, and across Holyhead Bay, was the Skerries light-house. The Skerries light-house was about northeast, magnetic, from South Stack light-house, and distant therefrom
34 between seven and eight miles. It was situated on a small island about two miles off Carmel Head, and about two or three miles north northwest, magnetic, from Church Bay. It carried a stationary white light between eighty and ninety feet above low-water mark, exhibiting in all directions at sea, and in Holy-

head Bay, with a range of about sixteen miles. It was burning all through the night of March 12th. It was established between seventy and eighty years ago, and has been regularly maintained since. There was at Skerries light-house a fog-horn or siren, worked by two powerful caloric engines at a pressure of fifty pounds to the square inch. The sound made was shrill and powerful, and had a range of eight miles in foggy weather, and the sound was regularly given from ten o'clock at night of March 12th until half past four o'clock in the morning of March 13th, at intervals of three minutes. The fog-horn or siren had been established for several years, and it has been regularly maintained ever since. All through the night of March 12th, until five o'clock in the morning of March 13th, a fog overspread the land surrounding Holyhead Bay and ex-
35 tended at times, and to some extent, into the bay and out to sea. The proper course of the Montana was to keep three or four miles off the land at the South Stack and on a course about northeast by east, magnetic, until she had the Skerries abaft her beam, and then to take a course about east by south, magnetic, to Liverpool. There was a westerly variation of about two points between magnetic courses and true courses in the Irish Channel and adjacent waters. The Montana, on a course about northeast by east, magnetic, passed within a short distance of South Stack light-house and saw the high light there between one and two o'clock in the morning of March 13th. It came into sight bearing about southeast by east and about one point forward of the starboard beam of the Montana. Her officers expected to see it at a distance of about twenty miles off, bearing from east northeast to northeast by east. When they saw it first they thought it to be fifteen miles off, and they remained of that opinion. It passed out of sight abaft their beam, they supposing it was hidden by the horizon. The master of the Montana did not ascertain by cross-bearings (which he might readily have made) the distance at which he was
36 from the light. He lost the light because it was shut out from him by a fog which intervened between it and the Montana, and thence he continued, with his engines working at full speed, and giving the Montana a speed through the water of about fourteen knots an hour, and on an east three-quarters south magnetic course, to which he had changed, which took him directly into Holyhead Bay, until after half past two o'clock. Before this time a man had been stationed at the fog-whistle of the Montana, who regularly blew it. At about half past two o'clock the master of the Montana heard the fog-gun on North Stack off his starboard quarter, abaft his starboard beam, and he thereupon changed the course of the steamer again to northeast by east, magnetic, but he continued his engines at full speed until 2.45 a. m., at which time the engines were put at half speed, which gave the steamer a speed through the water of between nine and ten knots per hour. Five minutes later the shore loomed up through the fog, on the starboard bow, and orders were given to slow and stop the engines and to put them at full speed astern; but before these
37 latest orders could be executed, the Montana ran ashore at Clegyr Point, in Church Bay. After leaving Tuskar, and up

to one o'clock in the morning of March 13th, the Montana was running with a flood tide. Then there was slack water, and she afterwards encountered an ebb tide which ran from three to four knots an hour. At no time that night were any soundings taken on board of the Montana, though soundings would have indicated to her master that he was running rapidly onto the shore. The lights at Holyhead breakwater and the Skerries were not seen by those in charge of the navigation of the Montana and her lookouts, and those in charge of her navigation did not hear the fog-bell at South Stack or that at Holyhead breakwater or the siren at the Skerries, and they did not hear the fog-gun at North Stack until it was on their quarter. When they lost sight of the South Stack light they were within range of the Skerries light and ought to and would have seen it unless it was shut out by a fog. The water outside of Holyhead Bay ranged from twenty to eighty fathoms in depth, while the water in Holyhead Bay ranged from five to seventeen fathoms in depth, regularly shoaling as the shore was approached. Almost immediately after
38 the Montana ran ashore she commenced filling with water, and thereby her cargo was in large part destroyed or damaged. Portions of it were thereafter taken from the steamer and forwarded to Liverpool, and there delivered. The Montana was then floated and taken to Liverpool for repairs. Those in charge of the navigation of the Montana were negligent in that, without having taken cross-bearings of the light at South Stack and so determined their distance from the light, they took an east three-quarters south course before passing the Skerries, and without seeing the Skerries light, and in that they continued at full speed after hearing the fog-gun at North Stack, and in that they took a northeast by east magnetic course on hearing said fog-gun, instead of stopping and backing and taking a westerly course out of Holyhead Bay, and in that they did not ascertain their position in Holyhead Bay by means of the lights and fog-signals, or by the use of the lead, or by stopping until they should, by those means or otherwise, learn where their ship was. Part of the cargo of the Montana consisted of three hundred bales of cotton, thirty-seven of which were marked H.
39 G. M., sixty-seven of which were marked B. B., ninety-six of which were marked L. O. W., and one hundred of which were marked D. D., owned by Swanson, Porteous & Co., merchants, of the city of New York, and shipped on their account by Ordway, Dudley & Maguire, merchants, of Nashville, Tennessee, under a through bill of lading from Nashville, Tennessee, to Liverpool, England, there to be delivered to their order, which bill of lading is Exhibit C to the consent signed by the proctors for the respondent herein, dated November 9th, 1882, contained in the apostles. At or about the time of shipment the libellant issued its policy and certificate of insurance to Swanson, Porteous & Co., in the sum of $20,000, payable to them or to their order, upon the said shipment of cotton, which sum was the value of said cotton, against all dangers and perils of the seas. Said policy of insurance, No. 4031, is Exhibit A to said consent and said certificate of insurance, No. 19405, is Exhibit B to said consent. The said bales of cotton were shipped in good order

on board of the Montana at New York, consigned by Swanson, Porteous & Co., through Swanson, Cairns & Co., who had duly be-
40 come joint owners with Swanson, Porteous & Co. of the said bales of cotton, and of the insurance thereon, to John Rew & Co., of Liverpool, brokers, who acted as agents of Swanson, Porteous & Co. and of Swanson, Cairns & Co. in disposing of the cotton and settling the insurance. The said bales of cotton were damaged by the stranding of the Montana, and the general or particular average thereon having been duly adjusted, the libellant paid the assured, through John Rew & Co., in settlement thereof, the sum of £800, British sterling, on May 8th, 1880, and £350 on March 18, 1881, and £301 14 9 on September 2d, 1881, and £27 9 10 on November 14th, 1882. Part of the cargo of the Montana consisted of one hundred and fifty bales of cotton, forty-five of which were marked H. E. N., forty-five of which were marked D. U. D., and sixty of which were marked H. E. L., and one hundred other bales of cotton, marked F. A. D., owned by Gilbert Parkes & Co., merchants, of Nashville, Tennessee, and shipped by them, under through bills of lading, in February, 1880, from Nashville, Tennessee, to Liverpool, England, there to be delivered to their order, which bills of lading are Exhibits H
41 and J to said consent. At or after the date of shipment, Gilbert Parkes & Co. sold the said cotton and transferred the said bills of lading to Hobart, Smith & Co., merchants, of the city of New York, and thereafter the libellant issued to Hobart, Smith & Co. its policy and certificates of insurance, payable to them, or to their order, upon said one hundred and fifty bales of cotton in the sum of $9,900, and upon said one hundred bales of cotton in the sum of $6,700, which sums were the values of said respective shipments of cotton, against all dangers and perils of the seas. Said policy of insurance last named, No. 1037, is Exhibit G to said consent, and said certificates of insurance last named are, respectively, Exhibits I and K to said consent. Said bales of cotton were shipped on board of the Montana, at New York, in good order and condition, on or about the 1st day of March, 1880. George Frazer, Son & Co., of Manchester, England, became joint owners with Hobart, Smith & Co. of said bales of cotton and the insurance thereon before the stranding of the Montana, and the cotton was consigned to them in England, and the bills of lading and certificates of insurance were sent to them by Hobart, Smith & Co. The said
42 bales of cotton were damaged by the stranding of the Montana and the general and particular average thereon having been duly adjusted, the libellant paid, in settlement thereof, to George Frazer, Son & Co. £1,000, British sterling, on December 6th, 1880, and £74 11 9 on September 12, 1881, and £13 19 3 on November 14th, 1882, for which sums George Frazer, Son & Co. accounted to Hobart, Smith & Co. Part of the cargo of the Montana consisted of twenty-two boxes of bacon and four tierces of hams owned by Jessie Baxter, of the city of Brooklyn, State of New York, and shipped on her account on board of the Montana, in good order and condition, on or about March 1st, 1880, by Archibald Baxter, agent, to be delivered at Liverpool to his order, under a bill of lading,

which is Exhibit P to said consent. At or about the time of said shipment the libellant issued its policy and certificate of insurance to said Archibald Baxter, agent, for account of said Jessie Baxter, payable to him or his order upon the said boxes of bacon and tierces of ham, in the sum of $1,100, which was the value of said bacon and hams, against all perils of the seas. Said policy of insurance last named, No. 4156, is Exhibit O to said consent,
43 and said certificate of insurance last named is Exhibit Q to said consent. The said bacon and hams were consigned to Marfels, Jones & Co., of Liverpool, for sale on said Jessie Baxter's account, and the bill of lading and certificate of insurance were sent forward to them with the consignment. By the stranding of the Montana the said bacon and hams were damaged, and upon the due adjustment of the general and particular average thereon the libellant paid, in settlement thereof, to said Marfels, Jones & Co. the sum of £114 10 3, British sterling, on October 5th, 1880, and the sum of £37 2 4 on September 23rd, 1881, and the sum of £0 15 1 on November 14th, 1882, for which sums Marfels, Jones & Co. duly accounted to said Jessie Baxter.

On the foregoing facts I find the following conclusions of law.

The stranding of the Montana and the consequent damage to her cargo having been the direct result of the negligence of the master and officers of the steamer, the respondent is liable therefor. The libellant was duly subrogated to the rights of the insured against the carrier for the damage to the cargo
44 insured by the libellant, and is therefore entitled to recover from the respondent the amount of such damage. The libellant is entitled to a decree against the respondent for the following sums, according to the report of the commissioner contained in the apostles: For $7,198.66 on account of the cotton shipped by Ordway, Dudley & Maguire, with interest thereon from September 20th, 1880; for $5,297.42 on account of the cotton shipped by Gilbert, Parkes & Co., with interest thereon from December 24th, 1880; for $741.56 on account of the bacon and hams shipped by Archibald Baxter, agent, with interest thereon from December 24th, 1880, and for its costs in the District court, taxed at the sum of $211.68, and for its costs in this court, to be taxed.

SAM'L BLATCHFORD,
Circuit Justice.

Endorsed: Findings of fact. Filed July 31st, 1884.

45 Circuit Court of the United States, Eastern District of New York.

THE PHENIX INSURANCE COMPANY
vs.
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

THE INSURANCE COMPANY OF NORTH AMERICA
vs.
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

BLATCHFORD, *J.*:

The libels in these cases allege the shipment of the goods on the Montana in good order, and the agreement of the respondent to deliver them in like good order at Liverpool; that she was one of a line of steamers which the respondent ran between New York and Liverpool; that the respondent was a common carrier of passengers and cargo between those ports; that the respondent received
46 the cargo and passengers of the Montana on this voyage as a common carrier, and that the respondent failed to deliver the goods, as agreed, but they were lost or destroyed and damaged by the stranding of the Montana. The particulars of the voyage and stranding are set forth, and it is alleged that the stranding and loss were due to the negligence of those managing the steamer in proceeding at too high a rate of speed, in not having a sufficient lookout, in going upon an improper and dangerous course, in not making due allowance for the influence of the ebb tide, in not having or in not using, and properly using, the usual and proper outfit and appurtenances of an ocean steamer, and, among others, the lead and the compass, and in not so heeding the shore lights and signals as would have indicated to them her dangerous position, and would have enabled them to regain and keep in a position of safety. The libels allege insurance by the libellants on the goods to amounts equal to or less than their value, payment of, or liability for moneys at and for the total loss or damage of the goods, damage equal to or greater than the amount of the insurance, and the subrogation of the libellants to the rights of the assured for the breaches of contract
47 by the respondent.

The answers deny that the respondent was a common carrier. They set up as defenses that the Montana was registered at Liverpool, which was her home port, where the respondent carried on its business, having an agency at New York; that the goods were received under bills of lading, which constituted the contracts; that the respondent assumed no greater risks than are expressed in the bills of lading, and that the loss or damage to the goods was by perils of the sea and by causes in respect of which the respondent was exempt from liability by law and by the bills of lading. The answers set forth the particulars of the voyage and the stranding, and deny negligence, and allege that in respect to the employment of a skilled and licensed master and officers and the careful observation by them of the elements and everything which would, in the exercise of ordinary human skill, enable them to examine and judge

the position of the vessel and to navigate her accordingly, and in respect to her seaworthiness and outfit and everything within the reasonable limits of skill and foresight the respondent com-
48 plied with its contracts and with all the requirements of law.

The bill of lading, Exhibit C, in the first-entitled case, is a through bill of lading issued at Nashville, Tennessee, headed "Overland and ocean bill of lading, Louisville and Nashville and South and North Alabama Railroad and the Williams and Guion Steamship Company, from Nashville, Tenn., to Liverpool, England." It covers 300 bales of cotton said to be "shipped in apparent good order," and "to be delivered in like good order and condition, * * * under the following terms and conditions, viz: That the said L. & N. & So. & No. Ala. railroads and their connections which receive this property shall not be liable for * * * loss or damage on any article or property whatever by fire or other casualty while in transit or while in deposit or places of transhipment or at depots or landings, at all points of delivery, nor for loss or damage by fire, collision, or the dangers of navigation while on seas, rivers, lakes, or canals. * * * It is further agreed that said L. & N. &. So. & No. Ala. railroads and their connections shall not be held accountable for any damage or any deficiency in packages after the same shall have been receipted for in good order by consignees or
49 their agents, at only the next carrier beyond the point to which this bill of lading contracts. * * * It is further stipulated and agreed that in case of any loss, detriment, or damage done to or sustained by any of the property herein receipted for during such transportation whereby any legal liability or responsibility shall or may be incurred, that company alone shall be answerable therefor in 'whose actual custody the same may be at the time of the happening of such loss, detriment, or damage,' and the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods; and it is further agreed that the amount of the loss or damage so accruing, so far as it shall fall upon the carriers above described, shall be computed at the value or cost of said goods or property at the place and time of shipment under this bill of lading. This contract is executed and accomplished and the liability of the L. and N. & So. & No. Ala. railroads and their connections, as common carriers thereunder, terminates on delivery of the goods or property to the steam-
50 ship company at New York, when the liability of the steamship commences, and not before; and it is further agreed that the property shall be transported from the port of New York to the port of Liverpool by the said steamship company, with liberty to ship by any other steamship or steamship line, subject to the following terms and conditions, viz: To be delivered * * * in the like good order and condition at the aforesaid port of Liverpool (the acts of God, * * * barratry of master or mariners, * * * loss or damage resulting from * * * risk of craft * * * at sea in craft or on shore, * * * or any other accident of the seas, rivers, and steam navigation, of whatever nature or kind soever, excepted, whether any one or more of all such exceptions arise occur,

or are in any way occasioned from or by the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or of any of the servants or employees of the ship-owners, or otherwise, however). * * *

"NOTICE.—In accepting this bill of lading the shipper or agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written
51 or printed." The bill of lading is dated at Nashville, Tennessee, February 4th, 1880, and is signed "B. F. Champe, C. A., agent severally, but not jointly."

The bill of lading, Exhibit H in the first-entitled case, is like Exhibit C, except that it is for 150 bales of cotton by other shippers, and is dated February 5th, 1880.

The bill of lading, Exhibit J in the first-entitled case, is like Exhibit H, except that it is for 100 bales of cotton, and is dated February 12th, 1880.

The bill of lading, Exhibit P in the first-entitled case, is dated at New York, March 1st, 1880, and covers 22 boxes of bacon and four tierces of hams, shipped in good order, and to be delivered in like good order and condition at the port of Liverpool ("the act of God, * * * barratry of master or mariners, * * * loss or damage resulting from * * * any of the following perils, whether arising from the negligence, default or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise howsoever), excepted, namely, risk of craft * * * at sea in craft or on shore * * * or from the consequence of any damage or injury
52 thereto, howsoever such damage or injury may be caused, * * * stranding, or other peril of the seas, rivers, or navigation, of whatever nature or kind soever, and howsoever such * * * stranding or other peril may be caused. * * * In accepting this bill of lading, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed."

The bill of lading, Exhibit C in the second-entitled case, is like Exhibit P in the first-entitled case, except that it is for 16,441$\frac{28}{60}$ bushels of wheat, in bulk and bags, by their shippers, and is dated February 28th, 1880.

The bill of lading, Exhibit H in the second-entitled case, is a through bill of lading, issued at Buffalo, New York, headed "Freight bill of lading, S. S. Montana, New York Central and Hudson River Railroad Company and the Guion Line Steamship Co., from Buffalo to Liverpool." It covers 100 boxes of middles, to be "shipped in apparent good order," and to be "subject to all the conditions expressed in the customary forms of bills of lading in use by
53 said steamships or steamship company at time of shipment," and "to be delivered in like good order and condition, * * * under the following terms and conditions, viz: That the said New York Central & Hudson River Railroad Company and its connections, which receive said property, shall not be liable * * * for loss or damage on any article of property whatever, by fire or other casualty, while in transit or while in deposit or places of tranship-

ment, or at depots or landings at all points of delivery, nor for loss or damage by fire, collision, or the dangers of navigation while on seas, rivers, lakes, or canals. * * * It is further agreed that said New York Central & Hudson River Railroad Company and its connections shall not be held accountable for any damage or deficiency in packages, after the same shall have been receipted for in good order by consignees or their agents, at or by the next carrier beyond the point to which this bill of lading contracts. * * * It is further stipulated and agreed that in case of any loss, detriment, or damage done to or sustained by any of the property herein receipted for during such transportation, whereby any legal
54 liability or responsibility shall or may be incurred, that company alone shall be held answerable therefor in whose actual custody the same may be at the time of the happening of such loss, detriment, or damage, and the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods; and it is further agreed that the amount of loss or damage so accruing, so far as it shall fall upon the carriers above described, shall be computed at the value or cost of the said goods or property at the place and time of shipment under this bill of lading. This contract is executed and accomplished, and the liability of the New York Central & Hudson River Railroad Company, as common carriers thereunder, terminates on the delivery of the goods or property to the steamship company at NewYork, when the liability of the steamship company commences, and not before; and it is further agreed that the property shall be transported from the port of New York to the port of Liverpool by the said steamship company, with liberty to ship by any other steamship or steamship line, subject to the follow-
55 ing items and conditions, viz: To be delivered * * * in the like good order and condition, at the aforesaid port of Liverpool, England (the act of God * * * barratry of master or mariners, * * * loss or damage resulting from * * * risk of craft * * * at sea, in craft or on shore, * * * or any other accidents of the sea, rivers, and steam navigation of whatever nature or kind soever excepted, whether any one or more of all such exceptions arise, occur, or are in any way occasioned from or by the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or of any of the servants or employees of the ship-owners, otherwise however. * * * Notice.—In accepting this bill of lading the shipper or the agent of the owner of the property carried expressly accepts and agrees to all the stipulations, exceptions, and conditions, whether written or printed." The bill of lading is dated at Buffalo, February 28th, 1880, and is signed "S. Strandguard, agent, severally, but not jointly," and also contains the words, "Buffalo, N. Y., to Liverpool, Eng., via New York."

The bill of lading, Exhibit I in the second-entitled case, is
56 like Exhibit H in the second-entitled case, except that it is for 145 boxes of bellies, shoulders, and middles.

The bill of lading, Exhibit N in the second-entitled case, is like

Exhibit P in the first-entitled case, except that it is for 200 bales of cotton, and is dated March 2d, 1880.

The question of negligence in the Montana has been severely litigated, but, on the facts found, there is no reason for doubt as to the proper conclusion. Those facts are set forth in the finding of fact and establish the negligence. It is not necessary to discuss the evidence. That was done in the decision of the district judge, and his views and conclusions are in the main satisfactory. Taking the account given by the master in his testimony the district judge was of the opinion that it was untrue in important particulars; that it was not true that the ship ran only five minutes, and that at slow speed, on an east three-quarters south course; that if the master did not note the length of time that he ran on that course he was guilty of gross negligence, and that if he did note the time it was
57 incumbent on him to state it truly, and he had not done so.

The district judge was also of opinion that the ship, instead of passing the South Stack at a distance of fifteen miles, passed it close at hand, and that it was not true that the light changed its bearing to the master in one hour with the ship at full speed on the course she was on only two points. The district judge also commented upon the facts that the point marked by the master on the chart as that at which he lost the South Stack light and changed his course to east three-quarters south was a point where the Skerries light should have been in view, but it was not, and yet it did not occur to him that that light and the South Stack light might be obscured by a fog, and that, although both the South Stack light and the Skerries light ought to have been seen by him at the same time if he was where he supposed he was, he did not allow a doubt to arise nor exercise the reasonable care of using the lead when he changed his course to east three-quarters south; that the inability to see either of the two lights while on the latter course was indica-
58 tive of a fog, even before the North Stack gun was heard; that the doubling of the lookouts and the blowing of the whistle indicated that a fog was thought of; that the testimony of the engineer that the engine went at full speed until just as the ship struck is contradictory of the statement of the master that he ran at half speed on the last three-quarters south course and slow after changing back again, and that to make this last change after having the North Stack fog-gun abaft his starboard beam and knowing what it indicated, and to keep on the new course, was a gross mistake. The conclusion of the district judge was that on the master's own showing he failed to use reasonable care and skill in navigating his vessel on hearing the North Stack gun; that such negligence caused the damage in question, and that it was not the result of a mere error of judgment.

In addition to the foregoing views, which are justified by the evidence and involve the conclusion that the master, when he changed from his course from east three-quarters south, had reasonable ground to believe that he had been mistaken all along as to the
59 position of his ship, and mistaken as to the distance of the South Stack light from him, during the time he saw it, it is

to be remarked that, in determining on the course to run on changing from east three-quarters south, the master was bound not to ignore the fact that he had taken no cross-bearings of the South Stack light. The failure to take such cross-bearings might not alone be enough to convict the master of negligence, but the recollection of the fact that he had not taken such cross-bearings coupled with the recollection of the fact that he first saw the South Stack light in so unexpected a direction and believed that he passed it at so unusual a distance, and with the failure to see the Skerries light on losing the South Stack light, and with the hearing of the North Stack fog-gun abaft his starboard beam, stamp his action after hearing the gun as negligence and not error of judgment.

Stress is laid by the respondent on the provisions in the through bills of lading that "the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods." But that provision applies only to the transportation to New York and not to the ocean transit. The terms
60 and conditions of the transportation to New York by the railroads and their connections are separate and distinct in the through bills of lading from the terms and conditions of the ocean transportation. The agent signs as "agent severally, but not jointly." The terms and conditions of the ocean carriage contain no clause as to the benefit of insurance. No such clause is found in the bill of lading dated at New York, not issued in connection with railroad transportation.

The clause as to non-liability for the negligence of the master or crew or for any accidents of the seas, however happening, is common to all the bills of lading, and the respondent contends that under them it is not liable for the loss in these cases. The district judge held that the respondent was a common carrier. The evidence shows that the steamers of the line carried to Liverpool grain, provisions, and cotton, and brought back British products, iron, coal, salt, and dry-goods; that they also carried passengers; that the respondent advertised for cargo and passengers, and carried general cargo;
61 that it refused to carry what would taint other cargo or be dangerous to passengers, or would overload the vessel, but with those exceptions it took what cargo was offered if the rate of freight was satisfactory, and that the ships sailed on regular advertised days, and had been running since 1866, and had a regular pier in New York and a regular landing place in Liverpool. If this does not make the respondent and the ships common carriers nothing can do so. In 2 Kent's Comm., 598, it is said: "Common carriers undertake generally, and not as a casual occupation, and for all people indifferently, to convey goods and deliver them at a place appointed for hire, as a business, and with or without a special agreement as to price. They consist of two distinct classes of men, viz., inland carriers by land or water and carriers by sea." It is also there said that in the aggregate body are included "owners of ships, vessels, and all water crafts, including steam-vessels and steam tow-boats, belonging to internal as well as coasting and foreign navigation." In 1 Parsons on Maritime Law, ch. 7, sec. 5, p. 173, it is

said: "One who carries by water, in the same way and on the same terms as a common carrier by land, is also a com-
62 mon carrier; or, in other words, it is not the land or the water which determines whether a carrier of goods is a common carrier, but other considerations, which are the same in both cases;" and a common carrier is said, p. 174, to be "one who offers to carry goods for any person between certain termini or on a certain route."

It is contended for the respondent that a carrier of goods by a vessel may lawfully contract for exemption from liability for the negligence of his agents in charge of the navigation of the vessel.

In New Jersey Steam Navigation Co. *vs.* Merchants' Bank (6 How., 344) the navigation company, a carrier by water, by a steamboat between New York and Providence, carried goods for one Harnden, under an agreement *the* he alone should be responsible for the loss or injury of any property committed to his care, and that no risk was assumed by or could be attached to the company as proprietor of the steamboat. Harnden was an expressman, who carried on the steamboat, under that agreement, money in specie for the bank. The boat was burned through the negligence of the company in the equipment of the boat and the stowage of cargo, and the
63 negligence of her officers on the voyage. The court treated the company as liable as a carrier, and considered the question as to how far the special agreement had qualified its common-law liability. The court held that while a carrier might limit his liability by a special agreement, expressly assented to by both parties, the agreement in that case could not be considered as stipulating for "wilful misconduct, gross negligence, or want of ordinary care, either in the seaworthiness of the vessel, her proper equipment and furniture, or in her management by the master and hands;" that the burden was on the bank to show such negligence or want of care; that that was shown, and that the company was liable for the loss, notwithstanding the special agreement.

In Railroad Co. *v.* Lockwood (17 Wall., 357), a drover was travelling on a railroad on a stock train, to look after his cattle, on a free pass, under an agreement by which he assumed all risks of personal injury. He was injured while travelling on the stock-train, and sued the railroad company for damages. Negligence on its
64 part was proved and found by the jury. The Supreme Court held that the case, on its facts, was one of carriage of the drover for hire. The distinct question raised, as stated by the court, was: "Whether a railroad company carrying passengers for hire can lawfully stipulate not to be answerable for their own or their servants' negligence in reference to such carriage." The court says that a common carrier may, by special contract, limit his common-law liability; that that was held in New Jersey Steam Navigation Co. *v.* Merchants' Bank, and that the case of Lockwood seemed to be almost precisely within the category of the decision in 6 Howard, the contracts in both cases being general, exempting the carrier from all risk, and the court, in the case in 6 Howard, having held that it would not be presumed that the parties intended to

include the negligence of the carrier or his agents in such exemption. The court, then, in the Lockwood case, proceeds to examine the question whether common carriers may excuse themselves from liability for negligence. It reviews the course of decisions in New York on the subject, and concludes that the courts
65 of New York had carried the power of the common carrier to make special contracts to the extent of enabling him to exonerate himself from the effect of even gross negligence; but it proceeds to examine the question as one of general commercial law, arising in a Federal court administering justice in New York, and having equal and co-ordinate jurisdiction with the courts of that State. It then discusses the cases on the subject in Pennsylvania, Ohio, Maine, and Massachusetts, and cites those in other States, and English cases, and cases as to both passengers and goods, in the Supreme Court. Among the cases as to goods were York Company *v.* Central Railroad, 3 Wall., 113; and Express Co. *v.* Kountz, 8 *Id.*, 342. In view of all these cases, it holds that a carrier having a regularly established business for carrying all or certain articles, and especially if that carrier be a corporation created for the purpose of the carrying trade, and the carriage of the articles is embraced within the scope of its chartered powers, is a common carrier; that a special contract about its responsibility does not
66 divest it of that character; that it cannot be permitted to stipulate for immunity for the negligence of its servants; that the business of the carrier is a public one, and those who employ the carrier have no real freedom of choice, and the carrier cannot be allowed to impose conditions adverse to public policy and morality; that freedom from liability for losses through sheer accident, or dangers of navigation which no human skill or vigilance can guard against, or for losses of money or valuable articles liable to be stolen or damaged, unless apprised of their character or value, or for like cases, is just and reasonable, and may be stipulated for, but that a public carrier cannot stipulate for exemptions which are unreasonable and improper, and which amount to an abdication of the essential duties of his employment; that a stipulation for exemption from liability for negligence is not just or reasonable; that a failure to exercise such care and diligence as are due from the carrier is negligence, and that the carrier remains liable for the negligence if the exemption stipulated for is unlawful The court then formulates its conclusions thus: 1. A common carrier cannot lawfully
67 stipulate for exemption from responsibility, when such exemption is not just and reasonable in the eye of the law. 2. It is not just and reasonable, in the eye of the law, for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants. 3. These rules apply both to carriers of goods and carriers of passengers for hire, and with special force to the latter. 4. A drover travelling on a pass, such as was given in that case, for the purpose of taking care of his stock on the train, is a passenger for hire. Although the case of Lockwood was one of a passenger, and not of goods, the court took pains to say that the

rules it laid down were applicable to a carrier of goods. The reason assigned was that the principles which demanded the existence of the rules in regard to passengers demanded that they should apply in regard to goods, though they applied with special force to passengers. Those principles were fully discussed in the opinion.

In Express Co. *v.* Caldwell (21 Wall., 264) it is stated to be
68 the settled law that the responsibility of a common carrier may be limited by an express agreement if the limitation be such as the law can recognize as reasonable and not inconsistent with sound public policy, and the cases in 3 and 17 Wallace are cited as holding that such limitation cannot extend to losses by negligence or misconduct. This view is again asserted in Railroad Co. *v.* Pratt (122 Wall., 123), and in Bank of Kentucky *v.* Adams Express Co. (93 U. S., 174). These cases involved goods carried on land.

No legal distinction can be perceived between goods carried by a common carrier on land and goods carried by one on the ocean, in respect to this question. It is urged, however, that the contract here was to be chiefly performed on board of a British vessel, and to be finally completed in Great Britain, and the damage occurred in Great Britain, and that the law of Great Britain, which is asserted to be different from the law here, is applicable to the case. As to this suggestion, it is sufficient to say that the answers expressly admit the jurisdiction of the district court, asserted
69 in the libels, and that it is not set up in the answers that the law of Great Britain, or any other law than that of *the* forum, is applicable to the case, nor is the law of Great Britain, if it be different, proved as a fact. The case must be decided according to the law of the Federal courts as a question of general commercial law.

Aside from this, it may be said that there was nothing in those contracts of affreightment to indicate any contracting, in view of any other law than the recognized law of such forum in the United States as should have cognizance of suits on the contracts.

As the libellants paid the losses and damage resulting from the negligence for which the respondent was liable, they were subrogated to the rights of the insured, and are entitled to maintain these suits to recover what they so paid. (Hall *v.* Railroad Cos., 13 Wall., 367, 373; The Montecello, 17 How., 152.)

It is urged for the respondent that as the libellants insured these risks, and were paid for so doing, they should bear the loss; that by the contract the shipper was the insurer against the negli-
70 gence, relieving the ship-owner of what would otherwise have been his risk, and reinsured the risk with the libellants, and that the agreement of the shipper to insure against the negligence gave him the insurable interest which he insured. The answer to this view is that the libellants insured the goods against the risks specified in the policies, which risks covered the damage in question, and that they are entitled to the rights of the shippers under the contracts, and as the exemption agreed on would be of no avail as a defence to suits by the shippers, it is of no avail against the libellants in this forum.

The policy of the maritime law to limit the liability of ship-owners

is invoked, and it is urged that they ought to be allowed to limit their liability by contract. The liability of ship-owners is limited by statute (Rev. Stat. U. S., secs. 4282 to 4289), and the extent to which such limitation is thus allowed may be considered as indicating the view of Congress as to how far legislation ought to prescribe exemption. It is said, in Railroad Co. *v.* Lockwood (17 Wall., 361), that these statutory provisions, as then enacted in the
71 act of March 3d, 1851 (9 U. S. Stat. at Large, 635), leave the ship-owner liable to the extent of his ship and freight for the negligence and misconduct of his employees, and liable without limit for his own negligence. In sec. 1 of the act of 1851 there was a proviso that nothing in the act contained should prevent the parties from making such contract as they pleased, extending or limiting the liability of ship-owners. As to that clause, it is said, in the same case, that that proviso neither enacts nor affirms anything, but simply expresses the intent of Congress to leave the right of contracting as it stood before the act. But that proviso is not re-enacted in the Revised Statutes, and, as a portion of the section containing it is embraced in a section of the reissue, the proviso is repealed by force of sec. 5596.

The amounts due to the libellants were ascertained by competent and sufficient proofs, the exceptions of the respondent to such competency and sufficiency having been waived and stricken out.

There must be decrees for the libellants, with costs, for the
72 amounts stated in the respective conclusions of law filed.

WILLIAM ALLEN BUTLER AND
THOMAS E. STILLMAN,
For the Libellants.
FRANKLIN A. WILCOX,
For the Claimant.

Endorsed: Decision. Filed July 31, 1884.

73 United States Circuit Court, Eastern District of New York.

THE PHENIX INSURANCE COMPANY
vs.
THE LIVERPOOL & GREAT WESTERN STEAM COMPANY (Limited).

The respondent herein files exceptions to the findings of the court, and to the refusals of the court to find, as follows:

First. It excepts to each and every the conclusions of law as found.

Second. It excepts to the refusal to find the first-proposed conclusion of law of the respondent.

Third. It excepts to the refusal to find the second-proposed conclusion of law of the respondent.

Fourth. It excepts to the refusal to find the third-proposed conclusion of law of the respondent.

Fifth. It excepts to the refusal to find the fourth-proposed conclusion of law of the respondent.

74 Sixth. It excepts to the refusal to find the fifth-proposed conclusion of law of the respondent.

Seventh. It excepts to the refusal to find the sixth-proposed conclusion of law of the respondent.

Eighth. It excepts to the proposal to find the seventh-proposed conclusion of law of the respondent.

Ninth. It excepts to the refusal to find the eighth-proposed conclusion of law of the respondent.

That a final decree was made by the court affirming the decree of the district court in favor of the libellant herein for the sum of $15,432.48, with interest on $13,237.64, the principal, from August 8th, 1883, to date of decree, amounting to the sum of $811.94, and costs in the district court, taxed at the sum of $211.68, and costs in this court, taxed at $86.25, amounting in all to the sum of $16,542.35.

And inasmuch as the said exceptions do not appear by the record of the decree of said court, the counsel for said respondent has prepared and caused this bill of exceptions to be settled as a record thereof, according to the form of the statute in such cases made and provided, and the practice of the court, and to be signed and filed.

SAM'L BLATCHFORD. [L. S.]

Endorsed: Respondent's exceptions. Filed Aug. 28, 1884.

75 *Bill of Exceptions.*

U. S. Circuit Court, Eastern District of New York, in the Second Circuit.

THE PHENIX INSURANCE COMPANY, Libellant and Appellee,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent and Appellant.

This cause came on for trial before the Honorable Samuel Blatchford, one of the associate justices of the Supreme Court of the United States, at a term of the circuit court of the United States in and for the eastern district of New York, in the second circuit, on the first and second days of July, 1884, on appeal by the respondent from the final decree of the district court of the United States for the eastern district of New York in favor of the libellant herein.

76 Counsel for the libellant read the libel and counsel for the respondent read the answer, as the same were contained in the apostles transmitted from said district court to said circuit court. Counsel for the libellant then put in evidence the testimony taken and depositions read on behalf of the libellant in the district court, as the same were contained in the apostles, it being considered that the counsel for libellant read the direct examination and that counsel for respondent read the cross-examination.

Counsel for the respondent then put in evidence the testimony taken and the depositions read on behalf of the respondent in the district court, as the same were mentioned in the apostles, it being considered that the counsel for respondent read the direct ex-

77 amination and the counsel for libellant read the cross-examination.

Here the testimony was closed.

Counsel for the respondent thereupon proposed, on behalf of respondent, the following findings of fact and conclusions of law to be found by the court, viz:

(There were three actions brought against the respondent and appellant herein, respectively, by the Ulster Marine Insurance Company, The Insurance Company of North America, and the Phenix Insurance Company, at or about the same time. These actions involved the same questions of fact and law to be decided and were tried at the same times; hence the proposed findings were printed together as hereto attached. The action of the Ulster Marine Insurance Company involved less than five thousand dollars, and has not been decided.)

78 *Proposed Findings of Fact and Conclusions of Law on the Part of the Respondent and Appellant.*

U. S. Circuit Court, Eastern District of New York.

THE ULSTER MARINE INSURANCE COMPANY (Limited), Libellant and Appellee,

against

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent and Appellant.

THE INSURANCE COMPANY OF NORTH AMERICA

against

THE SAME

THE PHENIX INSURANCE COMPANY *against* THE SAME.

79 First. The libellant, The Ulster Marine Insurance Company (Limited), have for many years and still are a corporation duly organized and existing under the laws of Great Britain and Ireland, for transacting business as insurers, among other things marine risks and adventures.

The libellants, The Insurance Company of North America, for many years have been and still are a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, for transacting business as insurers, among other things marine risks and adventures.

During such times the said libellant had an agency in London, England, in the care of Emil Ernst Wendt, agent for the adjustment and settlement of losses. The losses mentioned in their libel, except the losses on the Logan & Preston shipment of grain, were adjusted with the said agent and were paid through him in said London.

The libellants, The Phenix Insurance Company, for many years have been and still are a corporation duly organized and existing under and by virtue of the laws of the State of New York, for transacting business as insurers, among other things marine risks and adventures.

And during said times they had an agency in Liverpool, England, in the care of Cole and Kirkman, agents for the adjustment and settlement of losses. The losses referred to in their libel herein were adjusted by the said agents, and were paid by them in Liverpool.

Respondents are and were at the times herein mentioned also a corporation organized and existing under the laws of Great Britain, and in the month of March, 1880, were the owners of the steamship Montana, a registered vessel of Great Britain, hailing from Liverpool, where her said owners were domiciled.

80 Second. On a voyage of the said vessel from her home port, to wit, Liverpool, to New York and return, and on or about the first day of March, 1880, while the said vessel was lying in the port of New York, the firm of John Sinclair & Co. shipped on board of said steamship certain merchandise, to wit, 80 boxes of bacon and 10 tierces of lard (see Exhibits B, C), to be transported in and on board of said steamship to the said port of Liverpool.

Third. On or about February 28th, 1880, the firm of Logan & Preston shipped in and on board of said steamship, at New York, 16,441$\frac{8}{60}$ bushels of wheat, in bulk and in 85 ship's bags, to be transported in and on board of said vessel to the port of Liverpool.

That on or about February 28th, 1880, Jacob Dold shipped at Buffalo a quantity of provisions, known as "middles, shoulders, and bellies" (see Exhibits H & I), to be transported by the New York Central & Hudson River Railroad Company and the steamship "Montana" to Liverpool.

On or about March 2d, 1880, at New York, Samuel D. Jones shipped in and upon said steamship "Montana" 200 bales of cotton, to be transported in and upon said steamship "Montana" to the port of Liverpool.

Fourth. On or about the first day of March, 1880, one Archibald Baxter shipped on board of the said steamship "Montana" 22 boxes of bacon and 4 tierces of ham, to be transported in and upon said steamer to the port of Liverpool.

That on or about February 5th, 1880, Gilbert Parks & Co. shipped, at Nashville, Tennessee, 150 bales of cotton, to be transported thence by the Louisville and Nashville Railroad and the Williams & Guion Steamship Company to Liverpool, England, and that the same was thereafter received on board of the said steamship "Montana."

81 Fifth. That on or about February 4, 1880, Ordway, Dudley & McGuire shipped, at Nashville, Tennessee, 300 bales of cotton, to be transported by the Louisville & Nashville and South and North Alabama railroad and the Williams & Guion Steamship Company thence to Liverpool, and that the same was thereafter received on board of the said steamship Montana.

That on or about February 12th, 1880, Gilbert Parks & Company, at Nashville, Tennessee, shipped 100 bales of cotton, to be transported by the Louisville and Nashville railroad and the Williams & Guion Steamship Company thence to Liverpool, and the same was thereafter received in and on board the said steamship Montana.

Sixth. That on the respective shipments so as aforesaid made bills

of lading were executed and delivered by the said respondents and accepted by the shippers thereof. (See Exhibits B and C), (Insurance Company North America), H (Insurance Company North America), I (Insurance Company North America), C (Phenix Insurance Company), H (Phenix Insurance Company, J (Phenix Insurance Company), and P (Phenix Insurance Company).

These bills of lading provided, among other things, for exemption from liability of the said steamship or her owners for or on account of "barratry of master or mariners, * * * loss or damage resulting from any * * * accidents of the seas, rivers, and steam navigation of whatever nature or kind soever, * * * whether any one or more of all such exceptions arise, occur, or are in any way occasioned from or by the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or any of the servants or employees of the ship-owners, or otherwise however, or from the consequence of any damage or injury
82 thereto, howsoever such damage or injury may be caused, collision, stranding, or other peril, and howsoever such collision, stranding, or other peril may be caused. * * *

That said bills of lading, Exhibits H and I (Insurance Company North America), and also C, H, and J (Phenix Insurance Company), provided also that the carrier shall have the full benefit of any insurance that may have been effected upon or on account of said goods, and also that any damage which shall fall upon the carrier shall be computed at the value or cost of the said goods or property at the place and time of shipment.

Seventh. To protect themselves against the risks thus assumed *by* the respective shippers caused to be effected insurance with the respective libellants, and the respective policies provided, among other matters, as follows, to wit:

"Touching the adventures and perils which the said company is contented to bear, and does take upon itself in the voyage so insured as aforesaid, they are * * * barratry of the master and mariners, and all other perils, losses, and misfortunes that shall come to the hurt, detriment, or damage of the aforesaid subject-matter of this insurance."

Eighth. The said steamer left the port of New York on or about the 2d of March, 1880, with the said goods so as aforesaid laden on board, touching at Queenstown, and left Queenstown about 2.15 p. m., shore time, on the 12th of March, 1880. She reached the vicinity of Tuska about 8 o'clock, and took her departure from Tuska, then bearing nearly abreast, about four miles off, which is the usual and proper distance away from that point to lay her course up the Irish Channel. The course taken was north 42 degrees east by compass, which is the usual course, which course would leave the Skerries, the first turning point to Liverpool, bearing southeast about 2 miles (fol. 541).

83 Ninth. Upon the coast of Ireland is a light known as South Arklow, which is on a light-ship. Under ordinary circumstances, taking the distance she was from Tuska at the time she took her departure, she would pass about two miles out of the range of that

light, which light could be seen at a distance of about 10 miles on a clear night.

On the west side of the channel there is a light known as South Stack, and about one mile E. N. E. is a light known as North Stack. Farther up the channel is Holyhead breakwater, on the westernmost part of Holyhead Island. Farther up and about 7 to 8 miles from South Stack, in a direction E. N. E., magnetic (fol. 123), is the Skerries light. (For certainty the court is respectfully referred to the chart.)

The steamer's speed was about 14 knots an hour, and it was expected to pass the South Stack light, situated on the Welsh coast, about two o'clock the following morning. The tide was about high in the channel about midnight, so that from Tuska to to the South Stack light the steamer would have about four hours' flood and two hours' ebb. The ship had a list to starboard, and the tide setting strongly on the starboard quarter. It was a spring tide, and the effect of the tide was such as to set the vessel more towards the Irish coast than the Welsh coast, which, as the steamer passed abreast of the South Arklow light, situated on the Irish coast, about 9.43 p. m., was found to be the case as she passed within the range of that light, about 9 miles from it, when at ordinary slack water she would pass about two miles outside of the range, which range was about ten miles. The wind was light from the southward and eastward and the night a very clear, moonlight night.

Tenth. On the South Stack there are two lights, one 170 feet high—range in clear weather, 20 to 30 miles. There is also a low
84 light 40 feet above the water—range in clear weather, 3 to 4 miles, which is only lit in foggy weather; also a bell—range in fine weather, 3 to 4 miles; not so far in foggy weather.

On the North Stack there was a light and a gun.

On the end of Holyhead breakwater there was a light from 60 to 70 feet high—range in clear weather, 3 to 4 miles.

On the Skerries there was a light 80 to 90 feet above the water, range 15 miles in clear weather. There was also a fog-whistle or siren, which could be heard about eight miles.

Eleventh. At a little after one o'clock the light on the South Stack was made, as near as the captain and officers could judge (there was at this time on the bridge the captain, second, and fourth officers, besides the wheelman), bearing about southeast by east by compass, and then distant, according to the best judgment that then could be formed, about 15 miles. At 1.20 o'clock it bore abeam, and the ship was at the time upon the same course she had been previously steering, and running at her usual speed. Under the circumstances they had expected to make that light bearing northeast by east, and distant 20 miles or thereabouts.

Shortly after the Montana made the lights the Holyhead steamer, bound to Ireland, distant at least a half a mile, which steamer was sailing at from 17 to 18 knots an hour, and she had seen the lights of the Montana for fifteen minutes, the wheel of the Montana was ported a few points, and her engine was stopped and backed, only for a few moments, when her course was changed back to the origi-

nal course which she had been on. Soon after the South Stack light was lost, bearing at that time about off the starboard quarter or abaft the beam (fol. 463).

At this time it was a clear, bright night; there was no in-
85 dication of fog, and it was judged by the three officers on the bridge that the South Arklow light had "dipped" below the horizon; that they were outside of the range of it. The usual course was to pass the Skerries, about two miles to the northward and westward of the Skerries, and then change to the eastward for Liverpool, and it was their object to pick up the Skerries light.

It was judged that if they continued their course it would take them outside of the range of the Skerries light altogether, and would carry them beyond the Isle of Man, up the North Channel. It was important that they should see the Skerries light. At this time the lookout was doubled. There were four men on the lookout, all forward on the bow. This was done to take every precaution, it being in a crowded vicinity.

To pick up the Skerries lights the course was changed from north 42 degrees east to east three-quarters south, and the vessel ran on such course about five minutes, when a gun was heard, which was supposed to be from the North Stack.

The wind was about southwest, and it was judged that the gun could be heard about ten miles. The sound of the gun was judged to be on the starboard quarter (fol. 577). On hearing the gun the ship was altered back to her original course. Her speed on the east by south course was half speed, and after that slow—about four knots, with the tide against her, over the ground. After running about ten minutes something black was seen on the starboard bow, which was supposed to be a fog bank, when immediately the helm was put "hard-a-starboard," when the vessel stranded in Church Bay, which was about four miles from Holyhead breakwater. In consequence of this stranding the cargo, or certain portions of it, became lost and damaged, and these actions are brought to recover such damage.

86 Twelfth. The first intimation that any one had on the steamer that there was a fog on the land was the hearing of a gun from the North Stack. At South Stack there was a fine blue sky on night of the 12th, after which a "driving or lifting fog came up." The fog lifted at intervals sufficiently for the light-keeper at Holyhead to see the town lights and see the steamboats going in and out of the harbor.

Varian, on the "Earle Spencer," left Holyhead at 1.50, passed the Breakwater light without seeing it. After he got outside the fog cleared a little, and he saw the breakwater astern and South Stack light abeam. At all times it was clear on the water.

Thirteenth. In respect to the lights and sound signals none of them were either seen or heard by the witnesses at the respective stations, except the gun on the North Stack, and on the "Montana" no light was seen except the South Stack light and no sound heard except the north Stack gun.

Fourteenth. The water is deep off from the mouth of Holyhead

Bay out to the distance of six to ten miles, uniformly deep, from 24 to 25 fathoms, and therefore the casting of the lead would not have aided the ship at all to determine her position.

Conclusions of Law.

First. The respondent was not a common carrier in respect to the goods in question.

Second. He was only a ship carrier, having the right to reject, both by the laws of Great Britain and this country, the carriage of any goods offered to it.

87 Third. The respondent is fully protected by virtue of the exceptive clauses in the bills of lading. In respect to a part of the cargo so shipped the carrier is to have the benefit of any insurance effected by the shipper. The libellant having paid the loss, therefore, can maintain no action against the carrier. The respondent furnished the carrier with a seaworthy vessel, well equipped and appointed, with most experienced officers, who were carefully and vigilantly attending to their duties, together with a double and careful lookout at the time the ship stranded. No neglect can therefore be charged against the respondent.

Fourth. The cause of the action was the capricious fog, which settled under the South Stack light, and which rising shut out the light and led the officers to suppose that it was "dipping" below the horizon and they were not within its range.

This cannot be considered an error of judgment, but, if an error of judgment, there has been no case of neglect made out sufficient to charge the respondent.

Fifth. The clause in several of the bills of lading provide that the loss or damage, so far as it shall fall upon the carriers, shall be computed at the value or cost of the goods at the place and time of the shipment under this bill of lading.

There has been no proof of such value and no proof to warrant any finding in respect to damages.

Sixth. The mere payment of the loss by the insurance company will not entitle it to a recovery, unless if subrogated, or it appears that there was an express agreement or assignment, which does not appear.

88 Seventh. There can be no recovery against the respondent for any amount of damage, unless by public sale or due appraisement, and due, timely, and sufficient notice to the respondent. The testimony does not show this.

Eighth. The libel should be dismissed with costs.

BEEBE & WILCOX,
Respondent's Proctors.

The court filed with the clerk of said circuit court the findings of fact and conclusions of law as found by the court in the form following, to wit:

89 Circuit Court of the United States for the Eastern District of New York.

THE PHENIX INSURANCE COMPANY

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

In this case I find the following facts:

The respondent, The Liverpool and Great Western Steam Company (Limited), is a corporation organized under the laws of Great Britain, and in the month of March, 1880, and for a long time prior thereto, was the owner of the steamer Montana. The libellant, The Phenix Insurance Company, has been for many years and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York for transacting the business of insurance, including marine risks. During said time it had an agency in Liverpool, England, for the adjustment and settlement of losses, and the losses referred to herein were adjusted by such agency,
90 and were paid by it in Liverpool. The Montana was an ocean steamer, built of iron, and performed regular service as a common carrier of merchandise and passengers between the ports of Liverpool, England and New York, in the line commonly known as the Guion Line. By her and by other ships in that line the respondent was such common carrier. On the 2d of March, 1880, the Montana left the port of New York on one of her regular voyages, bound for Liverpool, England, with a full cargo, consisting of about twenty-four hundred tons of merchandise, and with passengers. She stopped at Queenstown in the afternoon of the 12th of March, and thence proceeded on her voyage. She passed Tuskar Rock, on the extreme southeastern portion of Ireland, at about eight o'clock in the evening of the 12th of March, and thence took a course up and across the Irish Channel. The course she took would ordinarily have carried her outside of the range of the South Arklow light, which is a light on the east coast of Ireland; but with the wind, tide, and currents as they were that night, she passed within range of that light, and about nine miles off, at 9.45 p. m. On passing the South Arklow light, the next light which those in
91 charge of the navigation of the Montana expected to make was the South Stack light, on the coast of Wales, at the entrance of Holyhead Bay. The master of the Montana was on the bridge and in charge of her navigation. The light-house on South Stack carried two lights; one, the high light, was about 170 feet above high water; it was white in color, and exhibited in all directions at sea, with a range of from twenty to thirty miles in clear weather; it was a revolving light, making one complete revolution in six minutes, and it showed a white flash light every minute. The other light was also white; it was about 40 feet above high water, and was a semi-revolving light, exhibiting every minute and a half in all directions between east northeast and west by north; its range in clear weather was from three to four miles, but it was regularly lit only in foggy or thick weather. Both of these lights were lit and

burning all through the night of March 12th. A fog-bell was regularly sounded at South Stack from ten o'clock in the night of March 12th until six o'clock in the morning of March 13th. The bell weighed two and a quarter tons, and was operated upon by a hammer, weighing about ninety-six pounds,
92 which struck the bell on the outside at intervals of fifteen seconds, and was worked by means of clock-work and a caloric engine. The sound was a powerful one, and its range was from three to four miles. The high light on the South Stack was established in 1809, and has ever since been regularly maintained. The fog-bell had been established for about twenty years, and has since then been regularly sounded in foggy weather. About east northeast, magnetic, from South Stack, and distant about one mile therefrom, was a fog-gun station, known as North Stack. This fog-gun station had been established about twenty years, and from midnight of March 12th until four o'clock in the morning of March 13th the fog-gun was fired regularly every ten minutes. The gun was a twenty-four pounder, and was each time charged with three pounds of powder and a large junk-wad to give extra sound, the range of the sound being between five and six miles when the fog was thick, with the wind, and about seven miles when the fog lifted. The fog-gun station since it was established has been regularly maintained, and the fog-gun fired regularly in foggy weather.

About two miles east, magnetic, from North Stack was the
93 Holyhead breakwater light-house. This light-house was at the outer end of Holyhead Breakwater, and it carried a fixed red light at a height of from sixty to seventy feet above high water, with flashes every seven and one-half seconds. The range of the light in clear weather was from three to four miles, and the range of the flash was about fourteen miles. The light was established in 1873, and has since then been regularly maintained. At the breakwater light-house was a fog-bell weighing about five hundred weight, which was operated upon by two hammers worked by clock-work and striking the bell on the outside three times in quick succession, at intervals of fifteen seconds; the range of the sound was from a mile and a half to two miles. The bell was established in 1873, and was regularly rung in foggy weather. It was in operation from midnight of the 12th of March until five o'clock in the morning of the 13th of March. About five miles north northeast, magnetic, from Holyhead Breakwater light-house, and across Holyhead Bay, was the Skerries light-house. The Skerries light-house was about northeast, magnetic, from South Stack light-house, and distant therefrom
94 between seven and eight miles. It was situated on a small island about two miles off Carmel Head and about two or three miles north northwest, magnetic, from Church Bay. It carried a stationary white light between eighty and ninety feet above low-water mark, exhibiting in all directions at sea and in Holyhead Bay, with a range of about sixteen miles. It was burning all through the night of March 12th. It was established between seventy and eighty years ago, and has been regularly maintained since. There was at Skerries light-house a fog-horn or siren, worked by two pow-

erful caloric engines at a pressure of fifty pounds to the square inch. The sound made was shrill and powerful, and had a range of eight miles in foggy weather, and the sound was regularly given from ten o'clock at night of March 12th until half past four o'clock in the morning of March 13th, at intervals of three minutes. This fog-horn or siren had been established for several years, and it has been regularly maintained ever since. All through the night of March 12th, until five o'clock in the morning of March 13th, a fog overspread the land surrounding Holyhead Bay and ex-
95 tended at times, and to some extent, into the bay and out to sea. The proper course of the Montana was to keep three or four miles off the land at the South Stack and on a course about northeast by east, magnetic, until she had the Skerries abaft her beam, and then to take a course about east by south, magnetic, to Liverpool. There was a westerly variation of about two points between magnetic courses and true courses in the Irish Channel and adjacent waters. The Montana, on a course about northeast by east, magnetic, passed within a short distance of South Stack light-house and saw the high light there between one and two o'clock in the morning of March 13th. It came into sight bearing about southeast by east and about one point forward of the starboard beam of the Montana. Her officers expected to see it at a distance of about twenty miles off, bearing from east northeast to northeast by east. When they saw it first they thought it to be fifteen miles off, and they remained of that opinion. It passed out of sight abaft their beam, they supposing it was hidden by the horizon. The master of the Montana did not ascertain by cross-bearings (which he might readily have made) the distance at which he was
96 from the light. He lost the light because it was shut out from him by a fog which intervened between it and the Montana, and thence he continued, with his engines working at full speed, and giving the Montana a speed through the water of about fourteen knots an hour, and on an east three-quarters south magnetic course, to which he had changed, which took him directly into Holyhead Bay, until after half past two o'clock. Before this time a man had been stationed at the fog-whistle of the Montana, who regularly blew it. At about half past two o'clock the master of the Montana heard the fog-gun on North Stack off his starboard quarter, abaft his starboard beam, and he thereupon changed the course of the steamer again to northeast by east, magnetic, but he continued his engines at full speed until 2.45 a. m., at which time the engines were put at half speed, which gave the steamer a speed through the water of between nine and ten knots per hour. Five minutes later the shore loomed up through the fog on the starboard bow, and orders were given to slow and stop the engines and to put them full speed astern, but before these latest orders could be executed
97 the Montana ran ashore at Clegyr Point, in Church Bay. After leaving Tuskar, and up to one o'clock in the morning of March 13th, the Montana was running with a flood tide. Then there was slack water, and she afterward encountered an ebb tide, which ran from three to four knots an hour. At no time that night

were any soundings taken on board of the Montana, though soundings would have indicated to her master that he was running rapidly onto the shore. The lights at Holyhead Breakwater and the Skerries were not seen by those in charge of the navigation of the Montana, and her lookouts and those in charge of her navigation did not hear the fog-bell at South Stack, or that at Holyhead Breakwater, or the siren at the Skerries, and they did not hear the fog-gun at North Stack until it was on their quarter. When they lost sight of the South Stack light they were within range of the Skerries light, and ought to and would have seen it, unless it was shut out by a fog. The water outside of Holyhead Bay ranged from twenty to eighty fathoms in depth, while the water in Holyhead Bay ranged from five to seventeen fathoms in depth, regularly shoaling as the shore was approached. Almost immediately after the
98 Montana ran ashore she commenced filling with water, and thereby her cargo was in large part destroyed or damaged. Portions of it were thereafter taken from the steamer and forwarded to Liverpool and there delivered. The Montana was then floated and taken to Liverpool for repairs. Those in charge of the navigation of the Montana were negligent in that, without having taken cross-bearings of the light at South Stack, and so determined their distance from the light, they took an east three-quarters south course before passing the Skerries, and without seeing the Skerries light, and in that they continued at full speed after hearing the fog-gun at North Stack, and in that they took a northeast by east, magnetic, course on hearing said fog-gun, instead of stopping and backing and taking a westerly course out of Holyhead Bay, and in that they did not ascertain their position in Holyhead Bay by means of the lights and fog-signals, or by the use of the lead, or by stopping until they should, by those means or otherwise, learn where their ship was. Part of the cargo of the Montana consisted of three hundred bales of cotton, thirty-seven of which were marked H. G. M.,
99 sixty-seven of which were marked B. B., ninety-six of which were marked L. O. W., and one hundred of which were marked D. D., owned by Swanson, Porteous & Co., merchants, of the city of New York, and shipped on their account by Ordway, Dudley & Maguire, merchants, of Nashville, Tennessee, under a through bill of lading from Nashville, Tennessee, to Liverpool, England, there to be delivered to their order, which bill of lading is Exhibit C to the consent signed by the proctors for the respondent herein, dated November 9th, 1882, contained in the apostles. At or about the time of shipment the libellant issued its policy and certificate of insurance to Swanson, Porteous & Co. in the sum of $20,000, payable to them, or to their order, upon the said shipment of cotton, which sum was the value of said cotton, against all dangers and perils of the seas. Said policy of insurance, No. 4031, is Exhibit A to said consent, and said certificate of insurance, No. 19405, is Exhibit B to said consent. The said bales of cotton were shipped in good order, on board of the Montana, at New York, consigned by Swanson, Porteous & Co., through Swanson, Cairns & Co., who had duly become
100 joint owners with Swanson, Porteous & Co. of the said bales

of cotton, and of the insurance thereon, to John Rew & Co., of Liverpool, brokers, who acted as agents of Swanson, Porteous & Co. and of Swanson, Cairns & Co. in disposing of the cotton and settling the insurance. The said bales of cotton were damaged by the stranding of the Montana, and the general or particular average thereon having been duly adjusted, the libellant paid the assured, through John Rew & Co., in settlement thereof the sum of £800, British sterling, on May 8th, 1880, and £350 on March 18, 1881, and and £301 14 9 on September 2d, 1881, and £27 9 10 on November 14th, 1882. Part of the cargo of the Montana consisted of one hundred and fifty bales of cotton, forty-five of which were marked H. E. N., forty-five of which were marked D. U. D., and sixty of which were marked H. E. L., and one hundred other bales of cotton marked F. A. D., owned by Gilbert, Parkes & Co., merchants, of Nashville, Tennessee, and shipped by them, under through bills of lading, in February, 1880, from Nashville, Tennessee, to Liverpool,
England, there to be delivered to their order, which bills of
101 lading are Exhibits H and J to said consent. At or after the
date of shipment Gilbert, Parkes & Co. sold the said cotton and transferred the said bills of lading to Hobart, Smith & Co., merchants, of the city of New York, and thereafter the libellant issued to Hobart, Smith & Co. its policy and certificates of insurance, payable to them or to their order, upon said one hundred and fifty bales of cotton in the sum of $9,900, and upon said one hundred bales of cotton in the sum of $6,700, which sums were the values of said respective shipments of cotton, against all dangers and perils of the seas. Said policy of insurance last-named, No. 1037, is Exhibit G to said consent, and said certificates of insurance last named are, respectively, Exhibits I and K to said consent. Said bales of cotton were shipped on board of the Montana, at New York, in good order and condition, on or about the 1st day of March, 1880. George Frazer, Son & Co., of Manchester, England, became joint owners with Hobart, Smith & Co. of said bales of cotton and the insurance thereon before the stranding of the Montana, and the cotton was consigned to them in England, and the bills of lading and certificates of insurance were sent to them by Hobart,
Smith & Co. The said bales of cotton were damaged by
102 the stranding of the Montana and the general and particular
average thereon having been duly adjusted, the libellant paid, in settlement thereof, to George Frazer, Son & Co., £1,000, British sterling, on December 6th, 1880, and £74 11 9 on September 12, 1881, and £13 19 3 on November 14th, 1882, for which sums George Frazer, Son & Co. accounted to Hobart, Smith & Co. Part of the cargo of the Montana consisted of twenty-boxes of bacon and four tierces of hams, owned by Jessie Baxter, of the city of Brooklyn, State of New York, and shipped on her account on board of the Montana in good order and condition on or about March 1st, 1880, by Archibald Baxter, agent, to be delivered at Liverpool, to his order, under a bill of lading which is Exhibit P to said consent. At or about the time of said shipment the libellant issued its policy and certificate of insurance to said Archibald Baxter, agent, for account of said Jessie

Baxter, payable to him or his order, upon the said boxes of bacon and tierces of ham in the sums of $1,100, which was the value of said bacon and hams, against all perils of the seas. Said policy
103 of insurance last named, No. 4156, is Exhibit O to said consent, and said certificate of insurance last named is Exhibit Q to said consent. The said bacon and hams were consigned to Marfels, Jones & Co., of Liverpool, for sale on said Jessie Baxter's account, and the bill of lading and certificate of insurance were sent forward to them with the consignment. By the stranding of the Montana the said bacon and hams were damaged, and, upon the due adjustment of the general and particular average thereon, the libellant paid, in settlement thereof, to said Marfels, Jones & Co., the sum of £114 10 3, British sterling, on October 5th, 1880, and the sum of £37 2 4 on September 23rd, 1881, and the sum of £0 15 1 on November 14th, 1882, for which sums Marfels, Jones & Co. duly accounted to said Jesse Baxter.

On the foregoing facts I find the following conclusions of law.

The stranding of the Montana, and the consequent damage to her cargo, having been the direct result of the negligence of the master and officers of the steamer, the respondent is liable therefor. The libellant was duly subrogated to the rights of the insured
104 against the carrier for the damage to the cargo insured by the libellant, and is, therefore, entitled to recover from the respondent the amount of such damage. The libellant is entitled to a decree against the respondent for the following sums, according to the report of the commissioner contained in the apostles: For $7,198.66 on account of the cotton shipped by Ordway, Dudley & Maguire, with interest thereon from September 20th, 1880; for $5,297.42 on account of the cotton shipped by Gilbert, Parkes & Co., with interest thereon from December 24th, 1880, for $741.56, on account of the bacon and hams shipped by Archibald Baxter, agent, with interest thereon from December 24th, 1880, and for its costs in the district court, taxed at the sum of $211.68, and for its costs in this court, to be taxed.

SAM'L BLATCHFORD,
Circuit Justice.

Exhibits mentioned in findings of fact are hereto annexed in book form, marked Exhibit Statement " B."

105 U. S. Circuit Court, Eastern District of New York, in the Second Circuit.

THE PHENIX INSURANCE COMPANY, Libellant and Appellee,
vs.
THE LIVERPOOL & GREAT WESTERN STEAM CO. (Limited), Respondent and Appellant.

Admitted Facts and Papers Respecting Insurance.

Part II.

EXHIBIT STATEMENT "B." Nov. 9, 1882. B. L. B.

106 EXHIBIT "A."

By the Phenix Insurance Company.

(Cargo.) Gold. (No. 4031.)

Swanson Porteous & Co., on account of whom it may concern—

1866o.

Sum insured, $——

This company not to be liable for more than $—— by any one vessel, at one time, unless otherwise agreed upon at the time of endorsement.

Premium, $——

Policy, $——

In case of loss to be paid in gold to them or order—do make insurance and cause to be insured, lost or not lost, at and from ports & places to ports & places, on cargo; premium to be settled on the end of each month upon all kinds of lawful goods and merchandise laden or to be laden on board the good vessel or vessels, whereof is master for this present voyage, —— ——, or whoever else shall go as master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called—

No shipment to be considered as insured until approved and endorsed on this policy by Lethbridge, Gallaher & Cornwell, agents.

Endorsements valued at the same, provided they do not vary from the cost more than — per cent., and the sound value at the port or place of destination is not to be deemed to exceed ten per cent. on the purchasing prices at the shipping port.

Beginning the adventure upon the said goods and merchandise from and immediately following the loading thereof on board of the said vessel, at —— aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at —— aforesaid. And it shall and may be lawful for the said vessel, in her voyage, to proceed, and sail to, touch, and stay at any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises hereby insured are valued (premium included) at ——.

Touching the adventures and perils which the said Phenix Insurance Company is contented to bear and take upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, or any part thereof. And

in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, their factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandises or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to the charges whereof the said insurance company will contribute according to the rate and quantity of the sum herein insured; having been paid the consideration for this insurance by the assured or their assigns, at and after the rate of rebate 20%, *per cent.*, on the subscribed amount of this policy on account. The company are to be entitled to premium at their usual rates on all shipments reported or not. It is warranted by the assured to report every shipment on the day of receiving advices thereof, or as soon thereafter as may be practicable, when the rate of premium shall be fixed by the president or the vice-president of the company.

And in case of loss such loss to be paid in thirty days after proof of loss and proof of interest in the said cargo (the amount of the note given for the premium, if unpaid, being first deducted), but no partial loss, or particular average, shall in any case be paid, unless amounting to five per cent.: Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said Phenix Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Phenix Insurance Company shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises, subsequent in date to this policy, the said Phenix Insurance Company shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

In case of any agreement or act, past or future, by the insured whereby any right of recovery of the insured against any persons or corporations is released or lost, which would, on acceptance of abandonment or payment of loss by this company, belong to this company but for such agreement or act; or in case this insurance is made for the benefit of any carrier or bailee of the property insured, other than the person named as insured, the company shall not be bound to pay any loss, but its right to retain or recover the premium shall not be affected.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation of the property insured, nor until ninety

days after notice of said condemnation is given to this company; also warranted not to abandon in case of blockade, and free from any claim for loss, damage, or expense arising from seizure, capture, detention, their consequences, or the consequences of any hostile act, whether lawful or unlawful, of any government, governments, or seceded States, or by unauthorized or lawless persons therein or otherwise, and whether occurring in a port of distress or otherwise, anything in this policy to the contrary notwithstanding, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

Warranted by the assured that vessels loading grain from Atlantic or Gulf ports in the United States for foreign ports, or general cargo for East Indies or ports in the Pacific, are to be loaded under the inspection of the surveyor of this company or the surveyor of the board of underwriters, and his certificate as to their proper loading and seaworthiness obtained, or the insurance by them under the policy to be void; also warranted not to load lime.

Proof of loss to be authenticated by the agent of the company, if there be one at the place such proofs are taken.

In witness whereof the president or vice-president of the said Phenix Insurance Company hath hereunto subscribed his name and the sum insured and caused the same to be attested by their secretary, in New York, the eighth day of October, one thousand eight hundred and seventy-eight.

MEMORANDUM.—It is also agreed that bar, bundle, rod, hoop, and sheet iron, wire of all kinds (covered or otherwise), tin plates, steel, madder, sumac, petroleum, wicker-ware, and willow (manufactured or otherwise), salt, grain of all kinds, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, hay, vegetables, and roots, rags, hempen yarn, straw goods, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature are warranted by the assured free from average, unless general; hemp, tobacco stems, matting, and cassia, except in boxes, free from average under twenty per cent., unless general; and sugar, flax, flaxseed, and bread are warranted by the assured free from average under seven per cent., unless general; and coffee in bags or bulk, pepper in bags or bulk, and rice, free from average under ten per cent., unless general.

Warranted by the insured free from damage or injury, from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by stranding or collision with another vessel.

If the voyage aforesaid shall have begun and shall have termi-

nated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage. It is understood and agreed that this policy shall not be deemed as continued in force for more than one year from the date hereof, unless otherwise agreed upon and endorsed herein.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

$——

STEPHEN CROWELL, *President.*

WM. R. CROWELL, *Secretary.*

Additional $——.

——— ———, *President.*

——— ———, *Secretary.*

Additional $——.

——— ———, *President.*

——— ———, *Secretary.*

Date.	Vessels.	From—	To—	Amount insured.	Rate of premium.	Amount of premium.		Remarks.

107 [Endorsed:] Phenix Insurance Company. 4031. October 8th, 1878. Swanson Porteous & Co. P. & P. to P. & P. Vessel or vessels. Cargo. $——, @ — per cent., $——. Policy, $——. Additional $——; additional $——; additional $——. Record, 16 folio. S. G. C.

108 EXHIBIT "B."

Phenix Insurance Company.

Western Union Telegraph Building, Broadway, cor. Dey St.

$20,000. No. 19405.

NEW YORK, *Feb.* 11, 1880.

MARKS AND NOS.

37 bales, H. G. N.
67 " B. B.
96 " L. O. W.
100 " D. D.
300 bales cotton.

CERTIFICATE OF INSURANCE.—To conform with the revenue laws of Great Britain, in order to collect claims this certificate must be stamped within two calendar months after receipt in the United Kingdom.

This is to certify that on the 30th day of January, 1880, this company insured under policy No. 4031, made for Swanson, Porteous & Co., dated Oct. 8th, 1878, twenty thousand dollars *dollars*, on three hundred bales of cotton, valued at same, on board rails and st'r "Wyoming," *and* or other st'r of Guion Line, at and from Nashville via New York to Liverpool, loss, if any, payable to the order of Swanson, Porteous & Co., endorsed on this certificate. It is understood and agreed that this certificate represents and takes the place of the policy and conveys all the rights of the original policy-holder (for the purpose of col-

lecting any loss or claim) as fully as if the property was covered by a special policy direct to the holder of this certificate and free from any liability for unpaid premiums.

LETHBRIDGE & CORNWELL, *Agents.*

L. & C.
+*d* 4 '80. H. L.

It is hereby understood and agreed that in case of claim for loss under this certificate the same shall be reported, as soon as the goods are landed or the loss known, to Cole & Kirkman, No. 4 Old Hall street, Liverpool, England (Mr. Thomas Kirkman being constituted the company's attorney, with authority to accept service of process).

It is especially agreed that all claims under this certificate shall be paid in sterling at the office of Brown, Shipley & Co., London. Claims to be adjusted according to the usages of Lloyds. Exchange fixed by agreement at four dollars and ninety-five ($4.95), gold, to the pound sterling.

Agreed to pay Messrs. John Rew & Co., Liverpool, the sum of eight hundred pounds, being on account of general & particular average loss hereon per "Montana" st'r, without prejudice.

Liverpool, 1 May, 1880.

COLE & KIRKMAN, *Agents.*

£800 (payable 8 May).
Received the above amount as stated.
Liverpool, 8 May, 1880. JOHN REW & CO.

Agreed to pay Messrs. John Rew & Co., Liverpool, the sum of three hundred and fifty pounds, being on account of general and particular average loss hereon for "Montana," without prejudice.

Liverpool, 10 March, 1881.

T. KIRKMAN, *Agent.*

£350 (payable 17 Mar.).
Received the above amount as stated.
Liverpool, Mar., 1881.

JOHN REW & CO.

108½ Pay to the order of John Rew & Co.

SWANSON, PORTEOUS & CO.

Adjusted with Messrs. John Rew & Co., of Liverpool, balance of general & particular average loss hereon, amounting to three hundred and one pounds fourteen shillings and nine pence, p'r "Montana" st'r.

Liverpool, 26 Aug., 1881.

T. KIRKMAN, *Agent.*

Amount of G. & P. A. loss			£1,451 14 9
1880.			
May 1. Sent out on ac.		800	
1880.			
M'ch 10.	do	350	
		——	1,150
Balance (payable 2nd Sept.)			301 14 9

Received the above amount as stated—three hundred and one pounds fourteen shillings and nine pence.

Liverpool, 2 Sept., 1881.

JOHN REW & CO.

109, 110—See Bill of Lading, inserted.

111 EXHIBIT D.

LIVERPOOL, *8th May*, 1880.

Received from the Phenix Ins'ce Co., New York, per Messrs. Brown, Shipley & Co., London, the sum of eight hundred pounds, being on account of general & particular average loss per "Montana" st'r, due under certificate No. 19405, policy No. 4031, without prejudice.

£800.

JOHN REW & CO.

112 EXHIBIT E.

LIVERPOOL, *17th March*, 1881.

Received from the Phenix Insurance Company of New York, per Messrs. Brown, Shipley & Co., London, the sum of three hundred and fifty pounds, being on account of general and particular average loss pr. "Montana" str., New York to Liverpool, due under the said company's New York certificate No. 19405, of 11 Feb., 1880, policy No. 4031.

£350. JOHN REW & CO.

113 EXHIBIT F.

LIVERPOOL, 2 *Sept.*, 1881.

Received from the Phenix Insurance Company of New York, pr. Messrs. Brown, Shipley & Co., London, the sum of three hundred and one pounds fourteen shillings and nine pence, being amount of balance of general and particular average loss per "Montana" str., New York to Liverpool, due under certificate No. 19405, dated New York, 11 February, 1880, policy No. 4031.

Amount of general and particular av. loss			£1,451 14 9
Settlement on ac., 1 May, '80	£800		
Do. 10 M'ch, '81	350		
		1,150	
Balance			301 14 9

JOHN REW & CO.,
P. AM. V. BERBROREY.

114 EXHIBIT "G."

By the Phenix Insurance Company.

(Cargo.) (No. 1037.)

Hobart Smith & Co., on account of whom it may concern—

10046.

Sum insured, $——, as endorsed.

This company not to be liable for more than $—— by any one vessel at one time, unless otherwise agreed upon at the time of endorsement.

Premium, $——

$——

In case of loss to be paid in funds current in the city of New York, to them, do make insurance and cause to be insured, lost or not lost, at and from ports and places to ports and places, direct or indirect, and including compress risks, with liberty of transhipment on cotton, April 19, '80.

This policy is to attach and cover cotton at and from time of purchase on such shipments as have been reported to this company and approved. It is understood and agreed that the risk of lighterage is covered under this policy when usual and customary to lighter. Either party at liberty to cancel on giving 10 days' written notice, but not to prejudice any risks then pending. Premiums to be settled monthly upon all kinds of lawful goods and merchandise, laden or to be laden on board the good vessel or vessels and conveyances, whereof is master for this present voyage, —— ——, or whoever else shall go as master in the said vessel, or by whatever other name or names the said vessel or the master thereof is or shall be named or called—

No shipment to be considered as insured, until approved and endorsed on this policy by this company.

Beginning the adventure upon the said goods and merchandise from and immediately following the loading thereof on board of the said vessel, at —— aforesaid, and so shall continue and endure until the said goods and merchandise shall be safely landed at —— aforesaid. And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises hereby insured are valued (premium included) at invoice cost, charges, and 10%, unless otherwise agreed upon at time of endorsement.

Touching the adventures and perils which the said Phenix Insurance Company is contented to bear and take upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, or any part thereof. And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, their factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandises or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers,

[Endorsed:]

Deliver to T. Plater, cashier, or order—order of Dudley & McGuin.

Deliver to A. Lane, cas.

THOS. PLATER, Cas.
A. LANE.

Deliver to the order of John Rew & Co.
SWANNSON, PORTEOUS & CO.
JOHN REW.

Delivery order given for—20 March, '80—

H. G. M.	21	169 bales cotton.
B. B.	27	
L. O. W.	62	
D. D.	59	

N. RUNDELL, Jr., Sec'y,
Per FRED'K DAMSELL.

Delivery order given for—

H. G. M.	7	Sixty-one bales cotton.
B. B.	18	
L. O. W.	20	
D. D.	16	

N. RUNDELL, Jun., Sec'y,
Per H. D. Hunter.

Delivered seventy-seven bales.
5 Ap'l, '80. H. D. HUNTER, For Sec'y.

Signed delivery order 16 Ap'l, '80, for B. B. (5), D. D. (2), L. O. W. (2), nine bales.

LIVERPOOL SALVAGE ASSOCIATION,
Per H. D. HUNTER.

in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to the charges whereof the said insurance company will contribute according to the rate and quantity of the sum herein insured, having been paid the consideration for this insurance by the assured or their assigns, at and after the rate of — per cent. on the subscribed amount of this policy on account. The company are to be entitled to premium at their usual rates on all shipments reported or not. It is warranted by the assured to report every shipment on the day of receiving advices thereof, or as soon thereafter as may be practicable, when the rate of premium shall be fixed by the president or the vice-president of the company.

And in case of loss such loss to be paid in thirty days after proof of loss and proof of interest in the said cotton (the amount of the note given for the premium, if unpaid, being first deducted), but no partial loss, or particular average, shall in any case be paid, unless amounting to five per cent.: Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said Phenix Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Phenix Insurance Company shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises, subsequent in date to this policy, the said Phenix Insurance Company shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

In case of any agreement or act, past or future, by the insured whereby any right of recovery of the insured against any persons or corporations is released or lost, which would, on acceptance of abandonment or payment of loss by this company, belong to this company but for such agreement or act; or in case this insurance is made for the benefit of any carrier or bailee of the property insured, other than the person named as insured, the company shall not be bound to pay any loss, but its right to retain or recover the premium shall not be affected.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation of the property insured, nor until ninety days after notice of said condemnation is given to this company; also warranted not to abandon in case of blockade, and free from any claim for loss, damage, or expense arising from seizure, capture, detention, their consequences, or the consequences of any hostile act, whether lawful or unlawful, of any government, governments, or

seceded States, or by unauthorized or lawless persons therein or otherwise, and whether occurring in a port of distress or otherwise, anything in this policy to the contrary notwithstanding, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

Warranted by the assured that vessels loading grain from Atlantic or Gulf ports in the United States for foreign ports, or general cargo for East Indies or ports in the Pacific, are to be loaded under the inspection of the surveyor of this company or the surveyor of the board of underwriters, and his certificate as to their proper loading and seaworthiness obtained, or the insurance by them under the policy to be void; also warranted not to load lime.

Proof of loss to be authenticated by the agent of the company, if there be one at the place such proofs are taken.

In witness whereof the president or vice-president of the said Phenix Insurance Company hath hereunto subscribed his name and the sum insured and caused the same to be attested by their secretary, in New York, the 1st day of January, one thousand eight hundred and eighty—.

MEMORANDUM.—It is also agreed that bar, bundle, rod, hoop, and sheet iron, wire of all kinds (covered or otherwise), tin plates, steel, madder, sumac, petroleum, wicker-ware, and willow (manufactured or otherwise), salt, grain of all kinds, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, hay, vegetables, and roots, rags, hempen yarn, straw goods, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature are warranted by the assured free from average, unless general; hemp, tobacco stems, matting, and cassia, except in boxes, free from average under twenty per cent., unless general; and sugar, flax, flaxseed, and bread are warranted by the assured free from average under seven per cent., unless general; and coffee in bags or bulk, pepper in bags or bulk, and rice, free from average under ten per cent., unless general.

Warranted by the insured free from damage or injury from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by stranding or collision with another vessel.

If the voyage aforesaid shall have begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage. It is understood and agreed that this policy shall not be deemed as continued in force for more than one year from the date hereof, unless otherwise agreed upon and endorsed herein.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers. $——.

STEPHEN CROWELL, *President.*

W. J. MOLYNEAU, *Secretary.*

Additional $——.

——— ———, *President.*

———— ————, *Secretary.*

Additional $——.

——— ———, *President.*

———— ————, *Secretary.*

Date.	Vessels.	From—	To—	Amount insured.	Rate of premium.	Amount of premium.		Remarks.

115 [Endorsed:] Phenix Insurance Company. 1037. January, 1, 1880. Hobart Smith & Co. P. & P. to P. & P. Vessel or vessels. Cargo. $—— as endorse, @ — per cent., $——. Additional $——; additional $——; additional $——. Record 1, folio —.

116, 117—See bill of lading, inserted.

118 EXHIBIT I.

Phenix Insurance Company.

Western Union Telegraph Building, Broadway, cor Dey St.

$9,900. No. 10934.

NEW YORK, *February* 9, 1880.

MARKS AND NOS.

D. U. D., 45
H. I. L., 60
H. E. N., 45

150

CERTIFICATE OF INSURANCE.—To conform with the revenue laws of Great Britain, in order to collect claims this certificate must be stamped within two calendar months after receipt in the United Kingdom.

This is to certify that on the 9 day of February, 1880, this company insured under policy No. 1037, made for Hobart Smith and Co., dated January 1, 1880, ninety-nine hundred dollars on 150 bales cotton, valued at sum insured, on board rail and Guion Line S. S., with liberties given in B. L., at and from Nashville to New York and thence to Liverpool, loss, if any, payable to the order of Hobart Smith and Co., endorsed on this certificate. It is understood and agreed that this certificatere presents and takes the place of the policy, and conveys all the rights of the original policy-holder (for the purpose of collecting any loss or claim) as fully as if the property

was covered by a special policy direct to the holder of this certificate and free from any liability for unpaid premiums.

PHILANDER SHAW.
Y. B. Y.

+*d* 22 '80. W. L.

It is hereby understood and agreed that in case of claim for loss under this certificate the same shall be reported, as soon as the goods are landed or the loss known, to Cole & Kirkman, No. 4 Old Hall street, Liverpool, England (Mr. Thomas Kirkman being constituted the company's attorney, with authority to accept service of process).

It is especially agreed that all claims under this certificate shall be paid in sterling at the office of Brown, Shipley & Co., London. Claims to be adjusted according to the usages of Lloyds. Exchange fixed by agreement at four dollars and ninety-five cents ($4.95), gold, to the pound sterling.

119 Agreed to pay Messrs. George Fraser, Son & Co., Liverpool, the sum of eight hundred and twenty pounds on account of loss hereon, the within interest having been shipped pr. "Montana" str.

Liverpool, 27 Nov., 1880.

COLE & KIRKMAN, *Agent.*

£820, payable Dec. 4.

Received the above amount as stated.
Liverpool, 6 Dec., '80.

For GEORGE FRASER, SON & CO.,
JOSEPH DEANE.

Adjusted with Messrs. George Fraser, Son & Co., Liverpool, balance of general & particular average loss hereon, amounting to fifty-four pounds four shillings and one penny, the within interest having been shipped pr. "Montana" str.

Liverpool, 3 Sept., 1881.

T. KIRKMAN, *Agent.*

£54 4 1 (payable 10 Sept.).

Received the above amount stated.

Liverpool, 12 Sept., 1891.

For GEORGE FRASER, SON & CO.,
JOSEPH DEANE.

HOBART, SMITH & CO.

120, 121—See Bill of Lading, inserted.

121 [Endorsed :]

Presented on receiving delivery order for (2) two bales cotton. 3d Ap'l, 1880.

LIVERPOOL SALVAGE ASSOCIATION,
Per FRED'K DAMSELL.

Delivered one bale. 8 Ap'l, '80.

LIVERPOOL SALVAGE ASSOCIATION,
Per H. D. HUNTER.

Gilbert Parkes & Co. for George Fraser, Son & Co.

JOSEPH DEANE.

117 [Endorsed:]

Presented on receiving delivery order for 47 bales of Cotton. 3d April, 1880.
Ex. Montana.

LIVERPOOL SALVAGE ASSOCIATION,
Per FRED'K DAMSELL.

Delivered one bale. 8th Ap'l, '80.
Ex. Montana.

LIVERPOOL SALVAGE ASSOCIATION,
Per H. D. HUNTER.

Delivered H. E. N. one bale, 20th Ap'l, '80.
Ex. Montana.

LIVERPOOL SALVAGE ASSOCIATION,
Per H. D. HUNTER.

Gilbert Parkes & Co. for George Fraser, Son & Co.

JOSEPH DEANE.

bales of the within interest, shipped p'r "Montana" str., amounting to twenty pounds, seven shillings and eight pence.
Liverpool, 3 Sept., 1881.

T. KIRKMAN, *Agent.*

£20 7 8 (payable 10 Sept.).

Received the above amount as stated.
Liverpool, 12 Sept. 1881.

For GEORGE FRASER, SON & CO.,
JOSEPH DEANE.

HOBART SMITH & CO.

124 EXHIBIT L.

LIVERPOOL, 27 *Nov.*, 1880.

Received from the Phenix Ins'ce Co. of New York the sum of one thousand pounds, being on account of loss in respect of one hundred and seventy-nine (179) bales of cotton (marks as hereon) shipped per "Montana" st'r and insured under certificate Nos. $\frac{10934}{1037}$ & $\frac{10944}{1037}$, for George Fraser, Son & Co.
6 Dec., '80.

JOSEPH DEANE.

£1,000.

Marks.
D U D, 45 bales.
H I H, 60 do.
H E N, 45 do.
F A D, 29 do.

179 bales.

125 EXHIBIT M.

LIVERPOOL, 12*th Sept.*, 1881.

Received from the Phenix Insurance Company of New York, per Messrs. Brown, Shipley & Co., London, the sum of fifty-four pounds four shillings and one penny, being the amount of balance of general and particular average loss per "Montana" st'r, New York to Liverpool, due under certificate No. 10934, dated New York, 9th Feb., 1880, policy No. 1037, for George Fraser, Son & Co.

JOSEPH DEANE.

Amount of general & particular average loss----------	£874	4	1
By settlement on ac., 27 Nov., '80----------	820		
	54	4	1

126 EXHIBIT "N."

LIVERPOOL, 12 *Sept.*, 1881.

Received from the Phenix Insurance Company of New York, per Messrs. Brown, Shipley & Co., London, the sum of twenty pounds seven shillings and eight pence, being amount of balance of general

and particular average loss due under certificate No. 10944, dated New York, the 14th February, 1880, policy No. 1037, in respect of twenty-nine (29) bales of cotton insured under said certificate, shipped per "Montana" st'r, New York to Liverpool, for George Fraser, Son & Co.

JOSEPH DEANE.

Amount of general & particular average loss	£200	7	8
By settlement on ac., 27 Nov., 1880	180		
Balance	£20	7	8

127 EXHIBIT "B."

By the Phenix Insurance Company.

(Cargo.) (No. 4156.)

A. Baxter, agent, on account of whom it may concern—

18994.

Sum insured, $——

This company not to be liable for more than $—— by any one vessel, at one time, unless otherwise agreed upon at the time of endorsement.

Premium, $——

In case of loss to be paid in funds current in the city of New York to him or order, do make insurance and cause to be insured, lost or not lost, at and from ports and places to ports and places, on cargo; premiums to be settled monthly upon all kinds of lawful goods and merchandise laden or to be laden on board the good vessel or vessels, whereof is master for this present voyage, —— ——, or whoever else shall go as master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called—

No shipment to be considered as insured until approved and endorsed on this policy by Lethbridge, Gallaher & Cornwell, agents.

Endorsements valued at the same, provided they do not vary from the cost more than 10 per cent., and the sound value at the port or place of destination is not to be deemed to exceed ten per cent. on the purchasing prices at the shipping port.

Beginning the adventure upon the said goods and merchandise from and immediately following the loading thereof on board of the said vessel, at —— aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at —— aforesaid. And it shall and may be lawful for the said vessel, in her voyage, to proceed, and sail to, touch, and stay at any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises hereby insured are valued (premium included) at ——.

Touching the adventures and perils which the said Phenix Insurance Company is contented to bear and take upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, or any part thereof. And

in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, his factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandises or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to the charges whereof the said insurance company will contribute according to the rate and quantity of the sum herein insured, having been paid the consideration for this insurance by the assured or his assigns, at and after the rate of — per cent. on the subscribed amount of this policy on account. The company are to be entitled to premium at their usual rates on all shipments reported or not. It is warranted by the assured to report every shipment on the day of receiving advices thereof, or as soon thereafter as may be practicable, when the rate of premium shall be fixed by the president or the vice-president of the company.

And in case of loss such loss to be paid in thirty days after proof of loss and proof of interest in the said cargo (the amount of the note given for the premium, if unpaid, being first deducted), but no partial loss, or particular average, shall in any case be paid, unless amounting to five per cent.: Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said Phenix Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Phenix Insurance Company shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises, subsequent in date to this policy, the said Phenix Insurance Company shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

In case of any agreement or act, past or future, by the insured whereby any right of recovery of the insured against any persons or corporations is released or lost, which would, on acceptance of abandonment or payment of loss by this company, belong to this company but for such agreement or act; or in case this insurance is made for the benefit of any carrier or bailee of the property insured, other than the person named as insured, the company shall not be bound to pay any loss, but its right to retain or recover the premium shall not be affected.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation of the property insured, nor until ninety

days after notice of said condemnation is given to this company; also warranted not to abandon in case of blockade, and free from any claim for loss, damage, or expense arising from seizure, capture, detention, their consequences, or the consequences of any hostile act, whether lawful or unlawful, of any government, governments, or seceded States, or by unauthorized or lawless persons therein or otherwise, and whether occurring in a port of distress or otherwise, anything in this policy to the contrary notwithstanding, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

Warranted by the assured that vessels loading grain from Atlantic or Gulf ports in the United States for foreign ports, or general cargo for East Indies or ports in the Pacific, are to be loaded under the inspection of the surveyor of this company or the surveyor of the board of underwriters, and his certificate as to their proper loading and seaworthiness obtained, or the insurance by them under the policy to be void; also warranted not to load lime.

Proof of loss to be authenticated by the agent of the company, if there be one at the place such proofs are taken.

In witness whereof the president or vice-president of the said Phenix Insurance Company hath hereunto subscribed his name and the sum insured and caused the same to be attested by their secretary, in New York, the eighteenth day of December, one thousand eight hundred and seventy-eight.

MEMORANDUM.—It is also agreed that bar, bundle, rod, hoop, and sheet iron, wire of all kinds (covered or otherwise), tin plates, steel, madder, sumac, petroleum, wicker-ware, and willow (manufactured or otherwise), salt, grain of all kinds, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, hay, vegetables, and roots, rags, hempen yarn, straw goods, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature are warranted by the assured free from average, unless general; hemp, tobacco stems, matting, and cassia, except in boxes, free from average under twenty per cent., unless general; and sugar, flax, flaxseed, and bread are warranted by the assured free from average under seven per cent., unless general; and coffee in bags or bulk, pepper in bags or bulk, and rice, free from average under ten per cent., unless general.

Warranted by the insured free from damage or injury from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by stranding or collision with another vessel.

If the voyage aforesaid shall have begun and shall have termi-

nated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage. It is understood and agreed that this policy shall not be deemed as continued in force for more than one year from the date hereof, unless otherwise agreed upon and endorsed herein.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

$——.

STEPHEN CROWELL, *President.*

W. B. CROWELL, *Secretary.*

Additional $——.

——— ———, *President.*

———— ———, *Secretary.*

Additional $——.

——— ———, *President.*

———— ———, *Secretary.*

Date.	Vessels.	From—	To—	Amount insured.	Rate of premium.	Amount of premium.		Remarks.

128 [Endorsed:] Phenix Insurance Company. 4156. Dec. 18, 1878. A. Baxter, agent. P. and P. to P. and P. Vessel or vessels. Cargo. $ ——, @ — per cent., $——. Additional $——; additional $——; additional $——. Record 17, folio —.

EXHIBIT "P."

129 Shipped, in good order and well conditioned, by Arch'd Baxter, agent, in and upon the steamship called Montana, now lying in the port of New York and bound for Liverpool, via Queenstown, twenty-two boxes bacon and four tcs. hams, being marked and numbered as in the margin, and are to be delivered from the ship's deck, where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of Liverpool—

GUION LINE
United States Mail Steamers.

NEW YORK: 29 Broadway. LIVERPOOL: 11 Rumford St.

B. 22 boxes bacon.
4 tierces ham.
—
26 packages.

T cwt. 5 16 0 0 at 30/ per ton £8 14 0
Primage..... 8 9
———
Total £9 2 9

(The act of God, the Queen's enemies, pirates, robbers, thieves, vermin, barratry of master, or mariners, restraint of princes, rulers, or people, loss or damage resulting from insufficiency in strength of packages, from sweating, leakage, breakage, or from stowage or contact with other goods, or from any of the following perils (whether arising from the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise howsoever) excepted, namely, risk of craft, explosion or fire at sea in

craft, or on shore, boilers, steam, or machinery, or from the consequences of any damage or injury thereto, howsoever such damage or injury may be caused, collision, stranding, or other peril of the seas, rivers, or navigation of whatever nature or kind soever, and howsoever such collision, stranding, or other peril may be caused, with liberty, in the event of the said steamer putting back to New York, or into any port, or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods by any other steamer, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations)—
unto order —— or to —— assigns, freight for the said goods being paid immediately on landing, without any allowance of credit or discount, at the rate of thirty shillings sterling p. ton of 2,240 lbs., gross weight, delivered, with customary primage and general average, if any, according to York-Antwerp rules.

Weight, measure, contents, quality, brand, and value unknown. The goods to be taken from alongside by the consignee, immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship. The master porterage of the delivery of the cargo to be done by the consignees of the ship, and the expense thereof to be paid by the receivers of cargo. The owners of the ship will not be responsible for money, documents, gold, silver, bullions, specie, jewelry, precious stones or metals, paintings, and statuary, unless bills of lading are signed therefor and the value thereof therein expressed.

In accepting this bill of lading the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed.

In witness whereof the agents of the said ship hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in New York, March 1st, 1880.

F. L. LE SAGE.

Endorsed: Arch. Baxter, agent. Marples, Jones & Co.

130 EXHIBIT Q.

Phenix Insurance Company.

Lethbridge & Cornwell, agents.

$1,100. No. 19596.

NEW YORK, *March 2nd*, 1880.

MARKS AND NOS. (B.)

Free of particular average unless stranded, sunk, burned, or in collision.

This is to certify that on the 2d day of March, 1880, this company insured under policy No. 4156, made for A. Baxter, ag't, dated Dec. 18th, 1876, one thousand one hundred dollars, on 22 boxes bacon and 4 tierces hams, valued at same, on board

CERTIFICATE OF INSURANCE.—To conform with the revenue laws of Great Britain, in order to collect claims this certificate must be stamped within two calendar months after receipt in the United Kingdom.

S. S. Montana, at and from New York to Liverpool, loss, if any, payable to the order of A. Baxter, ag't, endorsed on this certificate. It is understood and agreed that this certificate represents and takes the place of the policy, and conveys all the rights of the original policy-holder (for the purpose of collecting any loss or claim) as fully as if the property was covered by a special policy direct to the holder of this certificate, and free from any liability for unpaid premiums.

LETHBRIDGE & CORNWELL, *Agents.*

It is hereby understood and agreed that in case of claim for loss under this certificate the same shall be reported, as soon as the goods are landed or the loss known, to Cole & Kirkman, No. 4 Old Hall street, Liverpool, England (Mr. Thomas Kirkman being constituted the company's attorney, with authority to accept service of process).

It is especially agreed that all claims under this certificate shall be paid in sterling at the office of Brown, Shipley & Co., London; claims to be adjusted according to the usages of Lloyds. Exchange fixed by agreement at four dollars and ninety-five cents ($4.95), gold, to the pound sterling.

131 Adjusted with Messrs. Marples, Jones & Co., of Liverpool, a particular average loss hereon, amounting to one hundred and fourteen pounds ten shillings and three pence—the vessel having been stranded.

Liverpool, 28 Sept., 1880.

COLE & KIRKMAN, *Agents.*

£114 10 3 (payable 5 Oct.).

Received the above amount as stated.

MARPLES, JONES & CO.

Adjusted with Messrs. Marples, Jones & Co., of Liverpool, balance of general and particular average loss hereon, amounting to the sum of thirty-seven pounds two shillings & four pence.

Liverpool, 15 Sept. 1881.

T. KIRKMAN, *Agent.*

Total g. & p. av. loss	£151 12 7
Loss on ac. as above	114 10 3
Balance (payable 22 Sept.)	£37 2 4

Received the above amount as stated, thirty-seven pounds two shillings and four pence, £37 2 4.

MARPLES, JONES & CO.

MARPLES, JONES & CO.

132 EXHIBIT "R."

LIVERPOOL, 5 *Oct.*, 1880.

Received from the Phenix Ins'ce Co. of New York, per Messrs. Brown, Shipley & Co., London, the sum of one hundred and fourteen pounds ten shillings and three pence, being amount of particular average loss on 22 boxes bacon and 4 tierces hams, insured under certificate No. 19596 (policy No. 4156), dated New York, March 2d, 1880.

£114 10 3.

MARPLES, JONES & CO.
JNO. ROBERTS.

133 EXHIBIT "S."

LIVERPOOL, 23 *Sept.*, 1881.

Received from the Phenix Insurance Company of New York, pr. Messrs. Brown, Shipley & Co., London, the sum of thirty-seven pounds two shillings and four pence, being amount of balance of general and particular average loss, per "Montana" str., New York to Liverpool, due under certificate No. 19596, dated New York, 2d March, 1880, policy No. 4156.

MARPLES, JONES & CO.

Amount of general and particular average loss, as per Mr. Loftus' amended statement of 31st August, 1881,	£151 12 7
Less payment on ac. 28 Sept., '80	114 10 3
Balance	37 2 4

134 *Respondent's Exceptions.*

United States Circuit Court, Eastern District of New York.

THE PHENIX INSURANCE COMPANY
vs.
THE LIVERPOOL & GREAT WESTERN STEAM COMPANY (Limited).

The respondent herein files exceptions to the findings of the court, and to the refusals of the court to find, as follows:

First. It excepts to each and every the conclusions of law as found.

Second. It excepts to the refusal to find the first-proposed conclusion of law of the respondent.

Third. It excepts to the refusal to find the second-proposed conclusion of law of the respondent.

Fourth. It excepts to the refusal to find the third-proposed conclusion of law of the respondent.

Fifth. It excepts to the refusal to find the fourth-proposed conclusion of law of the respondent.

135 Sixth. It excepts to the refusal to find the fifth-proposed conclusion of law of the respondent.

Seventh. It excepts to the refusal to find the sixth-proposed conclusion of law of the respondent.

Eighth. It excepts to the refusal to find the seventh-proposed conclusion of law of the respondent.

Ninth. It excepts to the refusal to find the eighth proposed conclusion of law of the respondent.

That a final decree was made by the court affirming the decree of the district court in favor of the libellant herein for the sum of $15,432.48, with interest on $13,237.64, the principal, from August 8th, 1883, to date of decree, amounting to the sum of $811.94, and costs in the district court, taxed at the sum of $211.68, and costs in this court, taxed at $86.25, amounting in all to the sum of $16,542.35.

And inasmuch as the said exceptions do not appear by the record of the decree of said court, the counsel for said respondent has prepared and caused this bill of exceptions to be settled as a record thereof, according to the form of the statute in such cases made and provided and the practice of the court, and to be signed and filed.

SAM'L BLATCHFORD. [L. S.]

136 And in order that said exceptions may properly appear in the record of said circuit court, the proctors of said claimants have prepared and caused this bill of exceptions, upon due notice to the proctors for the libellants, to be settled as the record thereof, according to the form and practice of this court, and to be signed and filed.

SAM'L BLATCHFORD. [L. S.]

Endorsed: Bill of exceptions. Filed September 2, 1884.

137 At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second circuit, held at the United States court-rooms, in the city of Brooklyn, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and eighty-four.

Present: Honorable Samuel Blatchford, circuit justice.

THE PHENIX INSURANCE COMPANY, Libellant,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent.

This case having been heard on the pleadings, testimony, and proofs, and having been submitted with arguments and briefs by the advocates for the respective parties, and due deliberation

138 being had in the premises, it is now ordered, adjudged, and decreed by the court that The Phenix Insurance Company, the libellant herein, recover from The Liverpool and Great Western Steam Company (Limited), respondent herein, the sum of fifteen thousand four hundred and thirty-two $\frac{48}{100}$ ($15,432.48) dollars, the amount found due to the libellant by the commissioner to whom reference was had to ascertain and report the damages of the libellant, with interest on thirteen thousand two hundred and thirty-seven $\frac{64}{100}$ ($13,237.64) dollars, the principal of said damages, from the eighth day of August, 1883, the date of the report of the commissioner, to the date of this decree, amounting to the further sum of eight hundred and eleven $\frac{94}{100}$ ($811.94) dollars, and its costs in

the district court as taxed at the sum of two hundred and eleven $\frac{68}{100}$ ($211,68) dollars, and its costs in this court as taxed at
139 the sum of eighty-six $\frac{25}{100}$ ($86.25) dollars, amounting in all to the sum of sixteen thousand five hundred and forty-two $\frac{35}{100}$ ($16,542.35) dollars; and it is further ordered, adjudged, and decreed that a summary judgment be, and the same hereby is, entered in favor of The Phenix Insurance Company against The Liverpool and Great Western Steam Company (Limited) for the said sum of sixteen thousand five hundred and forty-two $\frac{35}{100}$ dollars; and it is further ordered, adjudged, and decreed that unless this decree be satisfied, or an appeal be taken and security be given within the time provided by law and the rules and practice of this court, then that the libellant have execution hereon against The Liverpool and Great Western Steam Company (Limited) to satisfy this decree, and that the clerk of the court recall to the registry
140 of this court the sum of nineteen thousand three hundred and five ($19,305.00) dollars, with all accumulations of interest thereon heretofore taken by him from the registry of this court, where it was held to the credit of this action, and under order of this court, entered the 14th day of May, 1884, by him deposited in the Central Trust Company of New York, and, when so recalled to the registry of this court, be by him distributed in satisfaction of this decree and the fees of the officers of this court; and this decree is to be entered as of the date in the caption thereof.

SAM'L BLATCHFORD.

Endorsed: Final decree. Entered as of the 16th day of August, 1884. Filed August 21st, 1884.

141 Circuit Court of the United States, Eastern District of New York.

THE PHENIX INSURANCE COMPANY, Libellant and Appellee,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent & Appellant.

Please take notice that the respondent in the above entitled action appeals to the Supreme Court of the United States from the decree of the circuit court of the United States for the eastern district of New York, entered in said action on the 21st day of August, 1884, that the decree of the district court be affirmed, and that the libellant recover from the respondent, as damages and costs, the sum of sixteen thousand five hundred and forty-two and $\frac{35}{100}$ dollars ($16,542.35), and from each and every part of said decree.

Dated New York, August 30th, 1884.

BEEBE, WILCOX & HOBBS,
Proctors for Resp'd't & App'l't.

To B. Lincoln Benedict, E'q'r., clerk of the U. S. circuit court for the eastern district of New York.

Messrs. Butler, Stillman & Hubbard, proctors for libellant & appellee, 111 B'way, New York.

Filed August 30, 1884.

142 At a stated term of the circuit court of the United States for the eastern district of New York, held in the United States court-rooms, in the city of Brooklyn, on the 1st day of September, 1884.

Present: The Honorable Samuel Blatchford, circuit judge.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant & Appellee,
against
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent & Appellant.

On reading and filing the annexed petition of appeal of
143 the respondent and appellant in the above-entitled action, and a bond in due form and in the sum of two hundred and fifty dollars ($250), with sufficient sureties, conditioned that the appellant shall duly prosecute its said appeal, having been given, and it appearing that the sum of forty-three thousand and sixty-five dollars ($43,065) is now on deposit in the Central Trust Company of New York to the credit of this action, in place and stead of any further bond on appeal:

Ordered that the said appeal be, and the same is hereby, allowed to the Supreme Court of the United States, and that the said bond be accepted, and that execution on the decree herein be stayed, pending the hearing of this appeal.

SAM'L BLATCHFORD.

Endorsed: Order allowing appeal. Filed September 2d, 1884.

144 Circuit Court of the United States, Eastern District of New York.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant & Appellee,
ag'st
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent & Appellant.

To the honorable the Supreme Court of the United States:

The appeal of the Liverpool and Great Western Steam Company (Limited), respondent and appellant herein, respectfully shows:

That on the 29th day of November, 1880, the libellant and appellee above named exhibited its libel in an action *in personam*, with clause of foreign attachment, in the district court of the
145 United States for the eastern district of New York, against the responden therein, claiming damages in the sum of $40,188.95 for the reason set forth in the said libel, and praying, among other things, that the goods and chattels of the respondent then within the jurisdiction of the said court be attached for the amount sued for.

That process thereupon duly issued out of said court and property of the respondent was attached, to wit, the steamship "Nevada;" whereupon the respondent appeared in the action and filed a stipulation for value of the same in the sum of $45,000.

That thereafter, and on or about the 22d day of March, 1881, the respondent filed its answer to the said libel in the said district court, denying all liability for the damages claimed, and praying that the said libel be dismissed, with costs to the respondents.

That on and from the 8th to the 14th days of December, 1882, the said cause being at issue, came on to be heard before the Hon. Charles L. Benedict, judge of the said district court, upon the pleadings, testimony, and proofs advanced by the respective par-
146 ties and the depositions and proofs taken in the said cause by them, and the said judge, being advised thereon, did, on the 19th day of February, 1884, make a final decree in the said cause whereby it was, among other things, ordered, adjudged, and decreed that the libellant recover from the respondent the sum of $36,277.20, its damages and costs.

That on the 2d day of May, 1884, by consent of the parties interested, and in conformity with order duly entered, the respondent deposited in the registry of the said district court the sum of $43,500 as security for the stipulation for costs and value theretofore filed by it, and the stipulators were then discharged from all liability thereunder; that it was ordered that the said deposit should be at all times and places subject to the order or decree of said court, or the appellate court in the action, and it was further ordered that on making said deposit the respondent should be released from giving any bond upon appeal from any judgment or decree entered in the said action.

That thereafter your petitioner, the appellant, duly appealed to the circuit court of the United States for the eastern district
147 of New York, in the second circuit, and the said cause was thereby removed to the said circuit court.

That the said money so deposited in the registry of the district court was subsequently transferred to the said circuit court, less one per cent., which the clerk of the said district court claimed and withheld as a fee, and the same, by consent of the parties in interest and order duly madethereon May 14th, 1884, — deposited by the clerk of said circuit court in the Central Trust Company of New York, there to remain subject to the further order or decree of said court in the action, or of any appellate court; that the same, viz., forty-three thousand and sixty-five dollars ($43,065), remains so deposited in place and stead of any security to be given by the respondent and appellant on this appeal.

That thereafter the said action was tried anew before the Honorable Samuel Blatchford, associate justice of the Supreme Court of the United States, sitting as circuit justice in the said circuit, on the pleadings, depositions, testimony, and proofs taken in the
148 said district court, and certain proposed findings of fact and conclusions of law submitted by the respective parties, and such proceedings were had in the said circuit court that afterwards the said justice filed certain findings of fact and conclusions of law, together with an opinion in writing.

That thereafter the respondent moved the said court to allow it to amend its pleadings in certain particulars described in said motion

and for leave to introduce evidence under said amendments, which said motion was denied.

That thereafter the respondent filed certain exceptions to the said conclusions of law, and that afterwards the said justice granted to the respondent a certain bill of exceptions, which said bill was duly filed in the office of the clerk of the circuit court of the United States for the said district.

That on the 16th day of August, 1884, the said circuit court made a final decree in said cause, which was entered in the said court on the 21st day of August, 1884, as of the date of the said 16th
149 day of August, 1884, whereby it was ordered, adjudged, and decreed that the said decree of the district court be affirmed in all things, and that the libellant, The Insurance Company of North America, recover from the respondent the sum of $35,141.40, the amount found to be due to the libellant by the said district court, with interest thereon amounting to $1,810.42, and the sum of $201.08, its costs in the said district, as taxed, and the sum of $93.25, its costs in the said circuit court, as taxed, amounting in all to the sum of thirty-seven thousand two hundred and forty-six $\frac{15}{100}$ dollars ($37,246.15).

That this respondent and appellant is advised and insists that the said decree is erroneous, inasmuch as the said decree of the district court should not have been affirmed, but should have been reversed, and that there should have been a decree made in favor of this respondent and appellant for its costs in the district and circuit courts, and this respondent and appellant, for these and other reasons, feeling aggreived by the said decree, hereby appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the decree of the said
150 circuit court and the libel, answer, pleadings, the findings of fact and conclusions of law, made and filed by the said justice, the exceptions thereto, and the bill of exceptions granted by the said justice, the respondent's motion for leave to amend its pleadings and for leave to introduce evidence under said amendments, the order denying said motion, and all the proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause, and that the said decree of the said circuit court and every part thereof may be reversed, and that a mandate may be issued to the said circuit court directing that the said decree be reversed, and that a decree may be entered in favor of the respondent and appellant for its costs, or that such other decree be made as to the said Supreme Court shall seem fit.

Dated New York, August 30th, 1884.

BEEBE, WILCOX & HOBBS,
Proctors for Respondent and Appellant.

Endorsed: Petition of appeal. Filed September 2d, 1884.

151 Circuit Court of the United States, Eastern District of New York.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant & Appellee,
ag'st
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited),
Respondent & Appellant.

Know all men by these presents that we, The Liverpool and Great Western Steam Company (Limited), William H. Guion, Jr., and Andrew M. Underhill, are held and firmly bound unto the above-named appellee, The Insurance Company of North America, in the sum of two hundred and fifty dollars, to be paid to said appellee; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

152 Sealed with our seals and dated this twenty-ninth day of August, in the year of our Lord one thousand one hundred and eighty-four.

Whereas a final decree has been rendered by the circuit court of the United States for the eastern district of New York in the above entitled action in favor of the libellant and appellee above named and against the respondent and appellant for the sum of thirty-seven thousand two hundred and forty-six dollars and fifteen cents ($37,246.15); and

Whereas the said decree was filed in the office of the clerk of the said circuit court of the United States for the eastern district of New York on the 21st day of August, 1884; and

Whereas the respondent above named, The Liverpool and Great Western Steam Company (Limited), feeling aggrieved thereby, has appealed from the said final decree of the said circuit court to the Supreme Court of the United States; and

Whereas the said respondent and appellant has caused to be deposited in the Central Trust Company of New York the sum of forty-three thousand and sixty-five dollars ($43,065) to the credit of the above-entitled action, as security for any damages

153 finally decreed against it, with costs in the said district and circuit courts:

Now, therefore, the condition of this obligation is such that if the above-named respondent shall prosecute its said appeal with effect and answer all costs on the said appeal if they fail to make the same good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE LIVERPOOL & GREAT WESTERN
STEAM CO. (LIMITED),
By WM. H. GUION, JR., *Ag't.* [SEAL.]
WM. H. GUION, JR. [SEAL.]
A. M. UNDERHILL. [SEAL.]

Signed, sealed, delivered, taken, and acknowledged in my presence this 29th day of August, 1884.

CORNELIUS D. GOULD,
Notary Public, New York Co.

154 CITY AND COUNTY OF NEW YORK, } ss:
Southern District of New York, }

William H. Guion, Jr., being duly sworn, deposes and says that he resides at No. 118 East 57th street, in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. H. GUION, JR.

Sworn to before me this 29th day of August, 1884.

CORNELIUS D. GOULD,
Notary Public, New York Co.

CITY AND COUNTY OF NEW YORK, } ss:
Southern District of New York, }

Andrew M. Underhill, being duly sworn, deposes and says that he resides at No. 35 West 128th St., in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

A. M. UNDERHILL.

Sworn to before me this 29th day of August, 1884.

CORNELIUS D. GOULD,
Notary Public, N Y. Co.

155 Approved as to form, amount, and sufficiency of witnesses.
New York, August 29th, 1884.

BUTLER, STILLMAN & HUBBARD.

Approved:

SAM'L BLATCHFORD,
Circuit Justice.

Endorsed: Bond on appeal. Filed September 5th, 1884.

156 UNITED STATES OF AMERICA, } ss:
Eastern District of New York, }

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one (1) to one hundred and fifty-five (155), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Phenix Insurance Company, libellant and appellee, *vs.* The Liverpool and Great Western Company (Limited), respondent and appellant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to

be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 23d day of September, A. D. 1884, and of the Independence of the United States the one hundred and ninth.

[Seal of the Circuit Court United States, Eastern District of New York.]

B. LINCOLN BENEDICT, *Clerk.*

157 By the Honorable Samuel Blatchford, justice of the circuit court of the United States for the eastern district of New York, in the second circuit, to the Phenix Insurance Company:

Whereas the respondent, The Liverpool and Great Western Steam Company (Limited), has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of you, the said Phenix Insurance Company, and against the said respondent, stating that the said decree is erroneous and praying that the same be reversed, and has deposited and filed the security required by law:

Now, therefore, you are hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the second Monday of October next, to do and receive what may appertain to *the* justice to be done in the premises.

Given under my hand and the seal of this court, at the city of Brooklyn, in the second circuit, the first day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

SAM'L BLATCHFORD.

158 [Endorsed:] U. S. circuit court, eastern district of New York. The Liverpool and Great Western Steam Company (Limited), appellant, ag'st The Phenix Insurance Company, appellee. Citation. Beebe, Wilcox & Hobbs, proctors for appellant, No. 69 Wall street, New York.

Due service of a copy of the within is hereby admitted.
Dated New York, Sept. 2d, 1884.

BUTLER, STILLMAN & HUBBARD,
Proctors for Libellant.

Endorsed on cover: E. New York C. C. U. S. No. 332. The Liverpool & Great Western Steam Company (Limited), appellant, *vs.* The Phenix Insurance Company. Filed 2d October, 1884.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

~~No. 355.~~ 576

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED), APPELLANT,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 2, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 333.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED), APPELLANT,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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1 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 29th day of November, in the year of our Lord one thousand eight hundred and eighty.

Present: The Hon. Charles L. Benedict, district judge.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant,
against
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent.

The above-named libellant this day appeared and filed its libel against the above-named respondent, in the words and figures following to wit:

To the Honorable Charles L. Benedict, district judge of the United States for the eastern district of New York:

The libel and complaint of the Insurance Company of North America against The Liverpool and Great Western Steam Company (Limited), in a cause of action arising from breach of contract, as hereinafter more particularly set forth, alleges and articulately propounds as follows:

First. At all times hereafter mentioned the libellant was and ever since has been and still is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania,
2 for transacting business, as insurer, among other things, of maritime risks and adventures. And at all the said times the respondent was and ever since has been and still is a corporation duly organized and existing under and by virtue of the laws of Great Britain and Ireland for the purpose of owning and navigating steamships and conveying passengers and cargo.

Second. The respondent, organized as aforesaid, has for many years past maintained a line of steamers running between the port of New York and the port of Liverpool, and has been and still is a common carrier of passengers and cargo between those ports. The "Montana" was a steamer owned and navigated by the respondents as one of the steamers of said line, and on or about the 2d day of March, 1880, left the port of New York with a cargo of merchandise and a large number of passengers received on board the said steamer by the respondent as a common carrier, to be landed and delivered in the port of Liverpool.

Third. Among such cargo were the following specified lots of goods and merchandise, to wit: 16,190$\frac{3}{60}$ bushels of wheat in bulk, and 251$\frac{5}{60}$ bushels of wheat in bags, marked R, shipped by the firm of Logan & Preston, to their own order; 130 bales of cotton, some of which bales were marked K.K, and some of which were marked K.H., all shipped by Samuel B. Jones, G. A., to his own order, and 25 boxes of clear bellies marked [**w**]; 15,100 boxes of shoulders marked [**w**] 16; 25 boxes of extra short clear middles marked [**w**] 17; 25 boxes extra long clear middles marked

[w] 18; 25 boxes of short clear middles marked [w] 19, and 25 boxes of long clear middles marked [w] 20, all with the brand "Jacob Dold;" 15 boxes of clear bellies marked [w] **A. 1,** with the brand "Albert;" 3 boxes of long clear middles marked [w] 21, with the brand "H. P. Low & Co.," and 2 boxes of short clear
3 middles marked [w] 22, with the brand "H. P. Low & Co.," all shipped by Jacob Dold, to his own order; all of which goods and merchandise were shipped on board the said steamer "Montana" in good order and well conditioned, and the respondent agreed to deliver the same in like good order and condition at the said port of Liverpool.

Fourth. On information and belief the libellant alleges that said steamer "Montana" sailed from New York as aforesaid, but has failed to deliver the said cargo or any portion of the same as agreed, but, as libellant is informed and believes, the said steamer, during the prosecution of her voyage from New York to Liverpool, stranded on the west coast of Great Britain, at or near Clegyr Point, in Holyhead Bay, and thereby the said lots of cargo became in large measure lost or destroyed and the remainder were greatly damaged.

Fifth. On information and belief, the libellant alleges that at the time of the stranding of the said steamer, and for several hours prior thereto, the weather was foggy and the tide ebb, and that the said steamer was proceeding at a high rate of speed, and without a sufficient lookout, and without making allowance for the influence of the ebb tide, which sets strongly towards the Welsh coast, and without noting and not heeding the course upon which the said steamer was proceeding, which at the time of the stranding, and for a long time prior thereto, was an improper and dangerous course, considering the size of the steamer, the nature of the coast, and the destination of the steamer, and might have been ascertained and known by those in charge of and navigating the said steamer to be an improper and dangerous course if they had noted and heeded the lights and signals from the shore, which they had an opportunity to see and hear, and if the said steamer had been furnished with the usual and proper outfit and appurtenances of an ocean steamer, and if
4 such outfit and appurtenances—among other things, the lead and the compass—had been used, and properly used, by those navigating the said steamer; and the libellant, on information and belief, alleges that there was a failure and neglect on the part of those navigating the said steamer to use and properly use such outfit and appurtenances—among other things, the lead and the compass; but the libellant is not advised whether the said steamer had such outfit or appurtenances in fit condition to use, but charges that she should have had such outfit and appurtenances in such condition.

Sixth. The libellant charges that the stranding of the said steamer and the consequent loss and damage of the said cargo was due to the negligence of those navigating the said steamer in proceeding at too high rate of speed, in not having a sufficient lookout, in going upon an improper and dangerous course, in not making due allowance for the influence of the ebb tide, in not having or in not using and properly using such outfit and appur-

tenances—among other things, the lead and compass—and in not so heeding the shore lights and signals, as would have indicated to them her dangerous position and would have enabled them to regain and keep in a position of safety.

Seventh. The libellant, before the time of the stranding of the said steamer and the damage or loss of the said cargo, issued its policies or certificates of insurance on the aforesaid loss of cargo and to amounts equal to or less than the value of the said cargo, to wit: For Logan & Preston, on the said shipments of wheat in bags and in bulk; for Alexander Burgess, on the said shipment of 130 bales of cotton, and for Jacob Dold, on the said shipments of 245 boxes of meat. The said policies or certificates of insurance were issued for persons having an interest in the said lots of cargo, respectively, to amounts equal to or greater than the amounts of the insurance made thereon by the libellant, and
5 the losses thereunder were made payable to the insured or their order, and by the loss and damage of the said lots of cargo as aforesaid the libellant has, under the said policies or certificates of insurance, has paid or become liable to pay to the insured or their respective orders, as and for the total loss or the damage of the said cargo, the following amounts, to wit: On account of the policy or certificate of insurance issued on the said lots of grain in bags and in bulk, the sum of twenty-seven thousand five hundred ($27,500) dollars, on account of the policy or certificate of insurance issued on the said bales of cotton the sum of about £1,100 British sterling, amounting to about five thousand five hundred ($5,500) dollars in the gold coin of the United States, and on account of the policy or certificate of insurance issued on the said boxes of meat the sum of £1,477.4.8 British sterling, amounting to seven thousand one hundred and eighty-eight $\frac{95}{100}$ ($7,188.95) dollars, amounting in all to the sum of forty thousand one hundred and eighty-eight $\frac{95}{100}$ ($40,188.95) dollars or thereabouts. The damages of the insured or their assigns from the loss of the said lots of cargo, respectively, were equal to or greater than the amounts of the insurance made and paid as aforesaid by the libellant, and the libellant is subrogated to all the rights of the insured or their assigns in the said lots of cargo respectively against the respondent for its failure to carry and deliver the said lots of cargo safely and in good order and condition, as it agreed to do, to the aforesaid amount of forty thousand one hundred and eighty-eight $\frac{95}{100}$ ($40,188.95) dollars.

Eighth. The respondent is a foreign corporation, as hereinbefore stated, but has officers in this district or property herein, to wit, the steamer "Nevada," now lying in the harbor of New York, within the jurisdiction of this honorable court.

Ninth. All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

6 Wherefore the libellant prays that process, in due form of law and according to the course and practice of this court in causes of admiralty and maritime jurisdiction, may issue against the said Liverpool and Great Western Steam Company (Limited), citing it to appear, and, in case it cannot be found, then that its goods and

chattels be attached to the amount sued for, and that it may be required to answer all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the said amount of forty thousand one hundred and eighty-eight $\frac{95}{100}$ ($40,188.95) dollars due to the libellants as aforesaid, with interest and costs, and that it may have such other and further relief in the premises as in law and justice it may be entitled to receive.

BUTLER, STILLMAN & HUBBARD,
Proctors for Libellant.

CITY AND COUNTY OF NEW YORK, } ss:
Southern Divtrict of New York, }

N. W. S. Catlin, being duly sworn, deposes and says that he is one of the firm of Catlin and Satterthwaite; that the said firm are the general agents and attorneys of the Insurance Company of North America, in the city of New York; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to certain matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; that his belielf is founded upon information derived from inspection of the original policies and certificates of insurance referred to in the libel and from correspondence with the officers of the said Insurance Company, and as to the matters relating to the stranding, from reports made at his request by
7 persons specially employed to make enquiries relating to the said stranding; that deponent is authorized to bring this action.

N. W. S. CATLIN.

Sworn to before me this 29th day of Nov., 1880.
C. S. SIMPSON,
Notary Public, N. Y. Co.

Endorsed: Libel. Filed November 29, 1880.

To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The answer of the Liverpool and Great Western Steam Company (Limited) to the libel and complaint of the Insurance Company of North America against the said The Liverpool and Great Western Steam Company (Limited) in a cause of action, as alleged, arising from breach of contract, &c., alleges as follows:

First. That the said The Liverpool and Great Western Steam Company (Limited) has duly appeared herein.

Second. The respondents have no knowledge as to the allegations contained in the first article of the libel, and therefore leaves the libellants to make such proof thereof as they may be advised, except that they admit that the respondents were at the times in said first article of the libel alleged a corporation duly organized and existing under and by virtue of the laws of Great Britain and Ireland for the purpose of owning and navigating steamers, and for the purpose

of carrying passengers and cargo, not, however, admitting, but expressly denying that the respondents were common carrier.

Third. The respondents deny each and every allegation contained in the second article of the libel, except as hereinafter admitted.

8 Fourth. The respondents deny each and every allegation contained in the third article of the libel, except as hereinafter admitted.

Fifth. The respondents deny each and every allegation contained in the fourth article of the libel, except as hereinafter admitted.

Sixth. They deny each and every allegation contained in the fifth article of the libel, except as hereinafter admitted.

Seventh. They deny each and every allegation contained in the sixth article of the libel.

Eighth. The respondents have no knowledge as to the allegations contained in the seventh article of the libel, and therefore leave leave the libellants to make such proof thereof as it may be advised.

Ninth. The respondents admit, as alleged in the eighth article of the libel, that they are a foreign corporation, but deny that they had at the times therein alleged or now have any officers in this district, but admit the remaining allegation of the said eighth article of the libel.

Tenth. The respondents deny each and every allegation contained in the ninth article of the libel, except as herein admitted, and except that they admit the jurisdiction of this honorable court.

Eleventh. The respondents, further answering herein, allege that since the year 1866 they have been the owners of certain steamers plying between the port of New York and the port of Liverpool, and that the steamer "Montana" was a steamer owned and navigated by them; that the home port of the said steamer was at Liverpool aforesaid, where she was registered and where the respondents carried on their business, having an agency, however, in the port of New York.

That on the 2d day of March, 1880, said steamer left the port of New York with a cargo of merchandise and a number of passengers to be transported thereon to the port of Liverpool.

9 That among such cargo was the cargo, or a portion thereof, described in the third article of the libel, and, so far as respondents have information, the said goods and merchandise were received on board of said steamer in apparent external good order and condition.

That the said goods and merchandise were delivered by the shippers thereof and received by the respondents under certain bills of lading, copies of which bills of lading are hereunto annexed, marked Scheules A, B, C, D, and which said bills of lading were executed and delivered by the respondents to and received by the said shippers, and to which said several bills of lading the respondents crave leave to refer, and to make the same a part of this their answer as constituting the contract between the shippers of said goods on the one hand and the respondents on the other; and the said respondents respectfully alleges that they assumed no greater risks and responsibilities than are expressed in the said bills of lading in respect

of the said goods and merchandise or to any one having any interest therein.

Twelfth. The respondents allege that on the voyage of said steamer from New York to Liverpool the said goods and merchandise, or a portion thereof, became lost or damaged by perils of the sea and causes from which the said respondents were exempt by law, and the terms of the said bills of lading or contract of affreightment under which said goods had, as aforesaid, been delivered and received by the said respondent.

Thirteenth. The respondents, further answering, allege that at and previous to the time of the accident mentioned in the libel the said steamer "Montana" was staunch and strong and well and sufficiently equipped and manned, and under the command of an experienced and duly licensed master; that the said master was on the bridge and a double lookout was properly placed and
10 stationed; that there was an officer of the deck; all of whom were carefully attending to their respective duties.

That the said steamer left Queenstown on March 12th, 1880, at about 2.15 p. m., on her voyage to Liverpool from New York; that the course of the steamer from Tuska was, as indicated by the steamer's standard compass, corrected, north 42 degrees E., except as hereinafter mentioned; that the steamer reached the vicinity of Tuska about eight o'clock of the same evening, and it was expected to pass the South Stack light, situated on the Welsh coast, about 2 o'clock the following morning. The tide was about high in the channel, about midnight, so that from Tuska to the South Stack light the steamer would have about four hours flood and two hours ebb tide, and consequently the effect of the tide was such as to set the vessel more towards the Irish coast than the Welsh coast, which, as the steamer passed abreast of the South Arklow light, situated on the Irish coast, about 9.45 p. m., was found to be the case.

That the weather was at all times clear on the water and lights visible; that the South Stack light, situated on the coast of Wales, was reported about 1.20 o'clock a. m., bearing about southeast by east, and distant, as near as could be judged, about fifteen miles; that light was then carefully observed by the said master and the second officer, who were on the bridge at the time, through their glasses, and they concluded that the position of the steamer was then in mid-channel and they were in full range of that light, which appeared to be just dipping. All this indicated that the flood tide had set the steamer well over towards the Irish coast. Up to this time the night was clear and the lights of passing vessels could be seen two or three miles. When the South Stack light was about a point abaft the beam, and the master and second officer still calculating that the steamer was about fifteen miles away from it, that light disappeared, as judged, below the horizon, and the course of the steamer was altered to due east, so as to come within the range of the Skerries light, situ-
11 ated on the Welsh coast, as it was thought the steamer was so far out that it might not be seen. After running on such east course five minutes a gun was heard on the starboard quarter; that the course of the steamer was immediately altered back to her orig-

inal course, northeast ¾ north, and the engines slowed, as it was then, for the first thought there might be a fog on the land, although it could not be seen. After running on the said course for about a half an hour, and expecting every moment to see the Skerries light on the starboard side, about 2.45 o'clock a. m., something which appeared to be a fog bank was observed on the starboard bow, and the engines were immediately ordered full speed astern, which order was promptly obeyed, but before the engines could be stopped the steamer went ashore in Church Bay on the coast of Wales, the steamer having very little headway at that time.

That in consequence of such stranding the said cargo mentioned in the libel, or a portion thereof, was either damaged or lost.

Fourteenth. And the respondents respectfully allege in respect to the premises that in so far as the employment of a skilled and licensed master and officers of said vessel, and in respect to the careful observation by them of the elements and everything which would, in the exercise of ordinary human skill, enable them to determine and judge the position of the vessel and to navigate her accordingly, and in respect to the seaworthiness and outfit of said steamer, and in respect of everything within the reasonable limits of skill and foresight, they have fully complied with all the requirements of their contract of affreightment regarding the goods and merchandise mentioned in the libel, and with all the requirements of law in such cases.

Fifteenth. That all and singular the premises are true.

Wherefore the respondent prays that the libel be dismissed with costs.

12 SOUTHERN DISTRICT OF NEW YORK, *ss:*

William H. Guion, Jr., being duly sworn, says that he has read the foregoing answer and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by him and not by the respondent is that it is a foreign corporation and deponent is the agent thereof.

WM. H. GUION, JR.

Sworn to before me this 18th day of March, 1881.

[L. S.] WM. H. RAFTERY,
Notary Public, N. Y. Co.

BEEBE, WILCOX & HOBBS, *Proctors for Resp'ts.*
BEEBE, *Advocate.*

Endorsed: Answer. Filed March 22d, 1881.

13 Bill of Lading inserted.

14 Shipped, in good order and well conditioned, by Sam B. Jones, G. A., in and upon the steamship called Montana or Wisconsin, now lying in the port of New York and bound for Liverpool, via Queenstown, two hundred bales of cotton, weighing one hundred and two thousand nine hundred and thirty-three (102,933) pounds, being marked and numbered as in the margin, and are to be delivered from the ship's deck, where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of Liverpool—

GUION LINE.
United States Mail Steamers.

NEW YORK: 29 Broadway
LIVERPOOL: 11 Rumford St.

(K. K.) 100 bales.
K. K. 100 bales.
200 "

102933 at $\frac{7}{32}$ per lb.	£93.16.0
Primage	4.13.9
Total	£98.9.9

(The act of God, the Queen's enemies, pirates, robbers, thieves, vermin, barratry of master or mariners, restraint of princes, rulers, or people, loss or damage resulting from insufficiency in strength of packages, from sweating, leaking, breakage, or from stowage or contact with other goods, or from any of the following perils (whether arising from the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise howsoever) excepted, namely, risk of craft, explosion or fire at sea in craft, or on shore, boilers, steam, or machinery, or from the consequences of any damage or injury thereto howsoever such damage or injury may be caused, collision, stranding, or other peril of the seas, rivers, or navigation of whatever nature or kind soever and howsoever such collision, stranding, or other peril may be caused, with liberty, in the event of the said steamer putting back to New York, or into any port, or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods by any other steamer, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations)— unto order or to assigns, freight for the said goods being paid immediately on landing, without any allowance of credit or discount, at the rate of seven-thirty-seconds of a penny (sterling) per pound, gross weight, delivered, with customary primage and general average, if any, according to York-Antwerp rules.

Weight, measure, contents, quality, brand and value unknown. The goods to be taken from alongside by the consignee, immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of ship. The master porterage of the delivery of the cargo to be done by the consignees of the ship, and the expense thereof to be paid by the receivers of cargo. The owners of the ship will not be responsible for money, documents, gold, silver, bullions, specie, jewelry, precious stones or metals, paintings, and statuary, unless bills of lading are signed therefor and the value thereof therein expressed.

In accepting this bill of lading the shipper or other agent of the

owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed.

In witness whereof the agents of the said ship hath affirmed to two bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in New York, March 2d, 1880.

15 Shipped, in good order and well conditioned, by Logan & Briston, in and upon the steamship called Montana, now lying in the port of New York and bound for Liverpool, via Queenstown, sixteen thousand four hundred and forty-one $\frac{28}{60}$ bus. wheat, in bulk and in eighty-five ship's bags, being marked and numbered as in the margin, and are to be delivered from the ship's deck, where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of Liverpool—

GUION LINE.

In bulks in for'd bin	16,190 $\frac{13}{60}$
In 85 bags R	251 $\frac{15}{60}$
	16,441 $\frac{28}{60}$
16,441 $\frac{28}{60}$ at 5d. per 60 lbs	£342.10.7
Primage	17. 2.6
Total	£359.13.1

(The act of God, the Queen's enemies, pirates, robbers, thieves, vermin, barratry of master, or mariners, restraint of princes, rulers, or people, loss or damage resulting from insufficiency in strength of packages, from sweating, leakage, breakage, or from stowage or contact with other goods, or from any of the following perils (whether arising from the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise howsoever) excepted, namely, risk of craft, explosion or fire at sea in craft, or on shore, boilers, steam, or machinery, or from the consequences of any damage or injury thereto, howsoever such damage or injury may be caused, collision, stranding, or other peril of the seas, rivers, or navigation of whatever nature or kind soever, and howsoever such collision, stranding, or other peril may be caused, with liberty, in the event of the said steamer putting back to New York, or into any port, or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods by any other steamer, and with liberty to sail with or without pilots, and to tow and assist vessels in all situtions)—

unto order of order, or to orders, assigns, freight for the said goods being paid immediately on landing, without any allowance of credit or discount, at the rate of five pence (5d.) sterling per 60 lbs., gross weight, delivered, with primage and average customary.

In witness whereof the master or agents of the said ship hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Weight, measure, contents, quality, brand, and value unknown. The goods to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship. The master porterage of the delivery of the cargo to be done by the consignees of the ship, and the

expense thereof to be paid by the receivers of cargo. The owners of the ship will not be responsible for money, documents, gold, silver, bullions, specie, jewelry, precious stones or metals, paintings, and statuary, unless bills of lading are signed therefor, and the value thereof therein expressed.

In accepting this bill of lading the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or prined.

Dated in New York, Feb. 28th, 1880.

For the agents, F. J. LESAGE.

16 Bill of lading inserted.

17 At a stated term of the district court of the United States of America for the eastern district of New York, on the 8th day of November, A. D. 1882.

Present: Hon. Chas. L. Benedict, district judge.

THE INSURANCE COMPANY OF NORTH AMERICA Libellant,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, Respondent.

Cause called; hearing ordered.

Appearances: Messrs. Thos. H. Stillman and W. Mynderse, for libellants; Messrs. Welcome R. Beebe & F. A. Wilcox, for respondent.

Mr. Mynderse reads libel; Mr. Wilcox reads answer.

Testimony taken and depositions read and hearing continued to the 10th, 13th, and 14th.

MAY 4th, 1883.

Hearing resumed; same appearances.

Cause argued and submitted.

18 *Opinion. June* 29, 1883.

BENEDICT, *J.:*

These actions are to recover the value of goods shipped on the steamship Montana, in New York, to be transported therein to Liverpool, and destroyed by the stranding of the steamer at Church Bay, on the Welsh coast, in March, 1880. The goods were insured by the several corporations who bring these suits, and, the loss having been paid by the insurers, they now seek to recover of the owners of the steamer the amounts so paid by them, respectively. Their claim rests upon the proposition that the stranding of the steamer and consequent loss of the goods insured was caused by the negligence of the master of the steamer, who was at the time responsible for her navigation.

On the part of the defendants the right of the libellants to recover is disputed upon several grounds:

First. It is said the facts proved do not make out a case where the insurers are subrogated to the rights of the owners of the goods, and therefore no recovery can be had in these actions; but, in my

opinion, the testimony is clearly sufficient to bring these cases
19 within the settled rule, and entitles the libellants to enforce against the owners of this steamer any right which accrued to the owners of the goods by reason of the bills of lading and subsequent loss of the property shipped.

Next, it is said in behalf of the defendants that their liability upon these bills of lading must be determined by the laws of England; but the undisputed facts show that there is no ground for such a contention.

Next, it is contended, and with much apparent earnestness, that the law of this country permits no recovery, because of the fact that the bills of lading sued on provide for exemption from liability for losses caused by the negligence of the defendant's servants; but this court is bound by authority to hold such a provision in the contract of a common carrier to be null and void. Upon this point the decision of the Supreme Court of the United States in Railroad Co. *v.* Lockwood, 17 Wall., 357, in my opinion, controls the present case. The only distinction between Railroad Co. *v.* Lockwood and the present case is that here the contract is a bill of lading for goods shipped on a vessel, while the contract passed on in Railroad Co. *v.* Lockwood was for the transportation of a passenger, and by railroad. I am unable to see that this distinction creates a difference between the cases. The defendants here were common carriers, and the reasons for the rule declared by the Supreme Court in Railroad Co. *v.* Lockwood appear to me to apply with full force to a contract for the carriage of goods in a ship; but, if this court be not bound by the decision of the Supreme Court in the case referred to, it is controlled on this occasion by decisions, in cases precisely similar to the present, which have been made by this court, and by the circuit court in this circuit. See The City of Norwich, 3 Ben., 575; Nelson *v.* National S. S. Co., 7 Ben., 341; The Colon, 9 Ben.,
354; The Hindoo, 1 Fed. Rep., 627; The Powhatan, 5 Fed.
20 Rep., 376, and 12 Fed. Rep., 876. It would be a waste of time, therefore, to follow the elaborate argument that has been presented in regard to the effect to be given to the provisions of the bills of lading under which the goods in question were transported.

My decision of this case must turn, not upon any question as to the form of the contract, but upon a question of navigation, and I am required to say whether the stranding of this steamer was caused by a failure on the part of the master to use reasonable care and skill in the navigation of his ship.

The decision of this question may well be approached with solicitude, but it is not seen that it involves an inquiry different in character from the inquiry so often forced upon the attention of courts of admiralty in cases of collisions of ships.

Upon this inquiry I enter with the remark that, inasmuch as the bills of lading sued on contain an exemption from liability for loss caused by stranding, I consider the libellants bound to prove that the cause of the stranding was negligence of the master. It will not be sufficient to show an error of judgment on the part of the

master, either in selecting one of two courses open to be pursued by him, or in coming to one rather than another of two conclusions possible to be drawn from the facts as known, or as they ought to have been known, by him. He must be proved to have displayed a want of reasonable care and skill in view of the facts as they appeared, or ought to have appeared, to him.

Moreover, the liability of the defendants will be determined upon the testimony of the master himself, who is produced as a witness by the defendants, and neither he nor they can complain if his statement of what was done and the attending circumstances be made the basis of my decree.

The master's statement is, in substance, as follows: That, bound up the Irish channel, when Tuskar light was about abeam some four miles away, he put the steamer upon a course N. 42
21 deg. E. On that course, South Arklow light, upon the Irish coast, ought not to have been seen, but was seen plainly. From this circumstance the master, as he says, judged that the flood tide then running was carrying him to west of his proper course; but, nevertheless, he made no change. He passed North Arklow light without seeing it, and made no other light until he made the South Stack light. This light, which should have been made when bearing E. N. E., and about 20 miles away, was made bearing S. E. by E., one point forward of his beam. That, he says, he held in sight for an hour, during which time he ran at full speed, and without change of course; that at 1.45 the light was abeam, and about 2 o'clock the bearing of the light had changed two points; and then the light was lost, bearing at the time one point abaft his beam. The master further says that the night was clear, and the South Stack light appeared to be dipping upon the horizon, from which circumstance he judged himself to be 15 miles away from it; and that, acting upon that assumption, when he lost the light, not having made the Skerries light, he changed his course from N. 42 deg. E. to E. $\frac{3}{4}$ S. On the latter course, he says, he ran five minutes at half speed, when, while running E. $\frac{3}{4}$ S., he heard the North Stack gun on his starboard quarter. He immediately altered the course of the steamer to N. 42 deg. E., and on that course ran slow for about 15 minutes (the answer says about half an hour), when the steamer brought up on the shore in Church Bay, in a thick fog, without giving him time, after discovering the shore, to reverse his engines.

That this account as given by the master and presented to the court for its consideration by the defendants is untrue in important particulars cannot be doubted.

The place where the steamer stranded is fixed. It is in Holyhead Bay, east of the Skerries and east of the North Stack. If, as the master says, and as is not doubted, the steamer was run-
22 ning upon a course N. 42 deg. E., when the shore in Church Bay was made ahead, it cannot be true, as the master and also the answer says, that he ran five minutes at slow speed upon the east course, for upon such a course she would not have cleared the South Stack, and would have run over the land. No explanation of this statement of the master in regard to the length of time

he held his easterly course has been given. He was running his vessel directly towards a dangerous coast. He was himself upon the bridge. His position was in doubt, and it is difficult to believe that he did not note the exact time of his running to the eastward. If he did not note the time, it was incumbent upon him to state it truly, and he has not done so. If, under the circumstances, he ran E. ¾ S. without noting the time, he was guilty of gross negligence.

Again, the result leaves no room to doubt that the steamer, instead of passing the South Stack at a distance of 15 miles, as the master says he at the time supposed, in fact passed the South Stack close at hand. The master now concedes such to have been the fact. How, then, can the master's statement be accounted for, when he says in positive terms that he had the South Stack in sight about an hour; that he examined it with glasses and timed its revolutions; and that, while running for this hour at full speed on a course N. 42 deg. E., the bearing of the light changed but two points, namely, from one point abaft to one point forward of his beam? If he saw the South Stack light at all, he must have seen it close at hand, for the result proves that he passed it close at hand. If he had seen the light, as he says he did, he would have passed it some 20 miles away.

If he never saw that light, why does he swear not only that he saw it, but examined it with a glass, and timed its revolutions by his watch, and knew at the time that it was the South Stack light, and observed that its bearing changed but two points while running an hour.

23 Still again, the master marks upon the chart the point at which he changed his course from N. 42 deg. E. to E. ¾ S., when, as he says, he lost the South Stack light. At that point the South Stack light and the Skerries light should have been in full view, as his chart told him, and he lost the South Stack without having made the Skerries light; yet he says it was clear where he was, and it did not occur to him to consider that the lights might be obscured by fog. No explanation of this failure to know what the surrounding circumstances, as he narrates them, were proclaiming—namely, that there was fog on the shore—has been given; nor has any modification of the testimony of the master been made, although the defendants have had time and opportunity to correct his testimony if they had desired.

Still again, when the master, according to his statement, lost the South Stack light, two conclusions were, perhaps, possible to be drawn from the fact—one, that he lost it because he had been carried so far to west by the tide; the other, that fog had shut out the light from him. Without using his lead he acted upon the assumption that he was too far to the west, and so ran his vessel on shore. His excuse for not using the lead is that there was nothing in the circumstances to lead him to believe that he was near the east shore, or that the lead would disclose his true position; but the fact stated by him that he lost the South Stack light and had not made the Skerries light; when both those lights should have been visible if he was where he supposed himself to be, should have raised a doubt as

to the correctness of his assumption that he had been carried by the tide several miles to west of his true course, and made it incumbent on him, in the exercise of reasonable care, to heave the lead at the time he changed his course to east. He was bound to suppose it possible that he was mistaken as to his position, and equally possible that his failure to make the lights was because of a
24 fog, and not because of distance from the Welsh coast. He was bound to know that the lead would tell him whether he was where he supposed himself to be, or near the Welsh coast, and the result shows that if the lead had been used it would have told him, and at once corrected his erroneous and unfounded assumption that it was 15 miles west of the South Stack light.

Still again, the master says that the weather was entirely clear about him, and he had no suspicion that fog was obscuring the lights until, when on the E. ¾ S. course, he heard the North Stack gun on his starboard quarter. But the fact that neither the South Stack light nor the Skerries light was visible to him while on the E. ¾ S. course was loudly proclaiming the presence of fog, and yet the master, according to his own statement, navigated his vessel up to the time of his hearing the North Stack gun as if there was no fog, and without any regard whatever to the warnings of fog plainly given by the circumstances as they are narrated by him.

It should, perhaps, be remarked here that doubt is cast upon the master's statement that he never thought of the presence of fog by the fact proved by other witnesses for the steamer, that the lookouts were doubled and the whistles blown, as also doubt is cast upon his statement that he ran at half speed on the easterly course and slow after again changing to N. 42 deg. E. by the testimony of the engineer that the engines went at full speed until just as the steamer struck. But I judge him by what he says, and he says most earnestly that he had no suspicion of the presence of fog about the lights until he heard the North Stack gun.

Lastly, the master says that while running E. ¾ S. he heard the North Stack gun; that he concluded from the sound that the gun was abaft his beam; that he at once changed his course from
25 E. ¾ S. to N. 42 deg. E., and proceeded slow some 15 minutes, until he brought up on the shore at Church Bay.

The position of the North Stack is fixed, and the point where the vessel stranded is also fixed, and these positions show that when the master changed his course from E. ¾ S. to N. 42 deg. E. he was east of the North Stack gun and in Holyhead Bay. If the master, at the time he abandoned his easterly course, knew that he was east of the North Stack and in Holyhead Bay, it was a gross mistake in navigation for him to take and hold a course N. 42 deg. E., as he did after hearing the gun; and we have his own word for the fact that at the time when, upon hearing the gun, he abandoned his easterly course for the course N. 42 deg. E., he knew that the North Stack was abaft his beam on the starboard quarter, as in fact it was.

Upon the master's own showing, therefore, it is impossible to conclude otherwise than that he conspicuously failed to use reasonable care and skill in navigating his vessel upon hearing the North

Stack gun, and that the loss in question was the immediate result of his negligence in that particular.

The only suggestion made in regard to this aspect of the case is that the master, when he heard the sound of the North Stack gun, could not have been sure of its bearing; but the difficulty with this suggestion is that the master repeatedly swears that when he heard the gun he knew that it was the North Stack gun, and that he did conclude that the gun was abaft his beam, as in fact it was. Upon the facts as they were, it was great negligence to take and hold a course N. 42 deg. E. after the North Stack gun was heard, and the master swears that he understood the facts to be as in truth they were. How is it possible, then, to absolve him from the charge of having run his ship ashore by failing to exercise reasonable care and skill in her navigation? It is to be remarked in this connection that the fact that the master, when he changed from E. ¾ S. to N. 42
26 deg. E., knew that he was in Holyhead Bay and east of the North Stack, is fixed beyond dispute by the statement in the defendant's answer, where it is said "After running on such east course five minutes a gun was heard on the starboard quarter."

My conclusion, therefore, is that the proofs show that the loss of the goods in question was caused, not by a mere error of judgment on the part of the master of the steamer Montana, but by a failure to exercise reasonable care and skill in the navigation of his ship.

The liability of the defendants follows, of course. Let decrees be entered in favor of the libellants, with an order of reference to ascertain the amount of the loss.

27 At a stated term of the district court of the United States for the eastern district of New York, held at the court-rooms, in the city of Brooklyn, on the 19th day of February, 1884.

Present: Hon. Charles L. Benedict, district judge.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant,

against

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent.

This cause having been tried before Hon. Charles L. Benedict on the 8th, 9th, 10th, 13th, and 14th days of November, 1882, on the pleadings and proofs, and the same having been submitted on the arguments and briefs of the respective parties, and the court having rendered a decision in favor of the libellant and against the respondent for the damages sustained by it, and costs, and an interlocutory decree having been made and entered herein, on the 30th day of June, 1883, adjudging that the libellants recover its damages sustained by reason of the facts set forth in the libel herein, with its costs, and ordering a reference to B. Lincoln Benedict, commissioner, to ascertain and report the amount of said damages, and the report of the said commissioner having been filed herein on the 8th day of August, 1883, whereby he reported that there is due to the libel-

lant for the damages sustained by it herein the sum of *one*
28 twenty-nine thousand five hundred and seventeen $\frac{64}{100}$ ($29,-517.64) dollars, with interest thereon to August 8th, 1883, amounting to five thousand six hundred and twenty-three $\frac{76}{100}$ ($5,623.76) dollars, amounting in all to the sum of thirty-five thousand one hundred and forty-one $\frac{40}{100}$ ($35,141.40) dollars, and exceptions having been unduly filed to said report by the respondent, which said exceptions were stricken from the records of the court by an order made and entered herein on the 13th day of February, 1884, it is now by the court—

Ordered, adjudged, and decreed that the said report be, and the same hereby is, in all things confirmed, and that The Insurance Company of North America, the libellant herein, recover from the Liverpool and Great Western Steam Company (Limited), the respondent herein, the said sum of thirty-five thousand one hundred and forty-one $\frac{40}{100}$ ($35,141.40) dollars, with interest on the principal sum thereof, to wit, twenty-nine thousand five hundred and seventeen $\frac{64}{100}$ ($29,-517.64) dollars from the 8th day of August, 1883, amounting to the further sum of nine hundred and thirty-four $\frac{72}{100}$ ($934.72) dollars, and with its costs, taxed at the sum of two hundred and one $\frac{08}{100}$ ($201.08) dollars, amounting in all to the sum of thirty-six thousand two hundred and seventy-seven and $\frac{20}{100}$ ($36,277.20) dollars; and it is further

Ordered, adjudged, and decreed that a summary judgment be, and the same hereby is, entered in favor of the Insurance Company of North America against the Liverpool and Great Western Steam Company (Limited) for the said sum of thirty-six thousand two hundred and seventy-seven $\frac{20}{100}$ ($36,277.20) dollars; and it is further

Ordered, adjudged, and decreed that unless this decree be satisfied or an appeal be taken within the time provided by law and the rules and practice of this court, then that the libellant have execution hereon against the said Liverpool and Great Western Steam Company (Limited) to satisfy this decree, and that the Liverpool and
29 Great Western Steam Company (Limited), William H. Guion, and Sidney Dillon, the respondent's stipulators for costs, and William H. Guion and Sidney Dillon, and the Liverpool and Great Western Steam Company (Limited), the respondent's stipulators for value, within ten days from the date of service of a copy of this decree upon the proctors for the respondent, cause the engagements of their stipulations to be performed or show cause within four days after the expiration of the said ten days, or on the first day of jurisdiction thereafter, why summary judgment for the amount of said stipulation should not be entered against them, their goods, chattels, and lands.

CHAS. L. BENEDICT.

Endorsed: Final decree. Filed and entered the 19th day of February, 1884.

30 At a stated term of the circuit court of the United States for the eastern district of New York, in the second circuit, on the 1st day of July, A. D. 1884.

Present: Hon. Mr. Justice Blatchford, associate justice.

Hearing on Appeal.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant and Appellee,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent and Appellant.

Cause called. Ready. Hearing ordered.

F. A. Wilcox, E'qr., for the respondent and appellant; William A. Butler, E'qr., and Thos. E. Stillman, E'qr., for appellee.

Counsel for appellee reads libel.

" " appellant " answer.

Testimony and depositions taken in district put in evidence.

Hearing suspended to July 2, 1884.

JULY 2, 1884.

Hearing resumed. Same appearances.

Cause argued and submitted on briefs.

Findings of fact and conclusions of law submitted.

31 Circuit Court of the United States, Eastern District of New York.

THE INSURANCE COMPANY OF NORTH AMERICA

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

In this case I find the following facts:

The respondent, The Liverpool and Great Western Steam Company (Limited), is a corporation organized under the laws of Great Britain, and, in the month of March, 1880, and for a long time prior thereto, was the owner of the steamer Montana. The libellant, The Insurance Company of North America, has been for many years, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania for transacting the business of insurance, including marine risks. During said

32 time it had an agency in London, England, for the adjustment and settlement of losses, and the losses referred to herein, except the losses on the Logan & Preston shipment of grain, were adjusted by said agency, and were paid through it in London. The Montana was an ocean steamer, built of iron, and performed regular service as a common carrier of merchandise and passengers between the ports of Liverpool, England, and New York in the line commonly known as the Guion Line. By her, and by other ships in that line, the respondent was such common carrier. On the 2d of March, 1880, the Montana left the port of New York, on one of her regular voyages, bound for Liverpool, Eng-

land, with a full cargo, consisting of about twenty-four hundred tons of merchandise, and with passengers. She stopped at Queenstown on the afternoon of the 12th of March, and thence proceeded on her voyage. She passed Tuskar rock, on the extreme southeastern portion of Ireland, at about eight o'clock in the evening of the 12th of March, and thence took a course up and across the Irish Channel. The course she took would ordinarily have carried her outside of the range of the South Arklow light, which is a light on the east coast of Ireland, but, with the wind, tides, and currents as
33 they were that night, she passed within range of that light, and about nine miles off, at 9.45 p. m. On passing the South Arklow light, the next light which those in charge of the navigation of the Montana expected to make was the South Stack light, on the coast of Wales, at the entrance of Holyhead Bay. The master of the Montana was on the bridge and in charge of her navigation. The light-house on South Stack carried two lights. One, the high light, was about 170 feet above high water. It was white in color, and exhibited in all directions at sea, with a range of from twenty to thirty miles, in clear weather. It was a revolving light, making one complete revolution in six minutes, and it showed a white flash light every minute. The other light was also white. It was about 40 feet above high water, and was a semi-revolving light, exhibiting every minute and a half in all directions between east northeast and west by north. Its range in clear weather was from three to four miles, but it was regularly lit only in foggy or thick weather. Both of these lights were lit and burning all through the night of March 12th. A fog-bell was regularly sounded at South Stack from
34 ten o'clock in the night of March 12th until six o'clock in the morning of March 13th. The bell weighed two and a quarter tons, and was operated upon by a hammer weighing about ninety-six pounds, which struck the bell on the outside at intervals of fifteen seconds, and was worked by means of clock-work and a caloric engine. The sound was a powerful one, and its range was from three to four miles. The high light on the South Stack was established in 1809, and has ever since been regularly maintained. The fog-bell had been established for about twenty years, and has since then been regularly sounded in foggy weather. About east northeast, magnetic, from South Stack, and distant about one mile therefrom, was a fog-gun station, known as North Stack. This fog-gun station had been established about twenty years, and from midnight of March 12th until four o'clock in the morning of March 13th the fog-gun was fired regularly every ten minutes. The gun was a twenty-four pounder, and was each time charged with three pounds of powder, and a large junk wad to give extra sound, the range of the sound being between five and six miles when the fog was thick, with the wind, and about seven miles when the fog lifted.
35 The fog-gun station, since it was established, has been regularly maintained and the fog-gun fired regularly in foggy weather. About two miles east, magnetic, from North Stack was the Holyhead Breakwater light-house. This light-house was at the outer end of Holyhead breakwater, and it carried a fixed red light at a

height of from sixty to seventy feet above high water, with flashes every seven and one-half seconds. The range of the light in clear weather was from three to four miles, and the range of the flash was about fourteen miles. The light was established in 1873, and has since then been regularly maintained. At the breakwater light-house was a fog-bell, weighing about five hundred weight, which was operated upon by two hammers worked by clock-work and striking the bell on the outside three times in quick succession at intervals of fifteen seconds. The range of the sound was from a mile and a half to two miles. The bell was established in 1873, and was regularly rung in foggy weather. It was in operation from midnight of the 12th of March until five o'clock in the morning of the 13th March. About five miles north northeast, magnetic, from Holyhead Breakwater light-house, and across Holyhead Bay,
36 was the Skerries light-house. The Skerries light-house was about northeast, magnetic, from South Stack light-house, and distant therefrom between seven and eight miles. It was situated on a small island about two miles off Carmel Head, and about two or three miles north northwest, magnetic, from Church Bay. It carried a stationary white light between eighty and ninety feet above low-water mark, exhibiting in all directions at sea, and in Holyhead Bay, with a range of about sixteen miles. It was burning all through the night of March 12th. It was established between seventy and eighty years ago, and has been regularly maintained since. There was at Skerries light-house a fog-horn or siren, worked by two powerful caloric engines at a pressure of forty pounds to the square inch. The sound made was shrill and powerful, and had a range of eight miles in foggy weather, and the sound was regularly given from ten o'clock at night of March 12th until half past four o'clock in the morning of March 13th, at intervals of three minutes.
The fog-horn or siren had been established for several years,
37 and it has been regularly maintained ever since. All through the night of March 12th, until five o'clock in the morning of March 13th, a fog overspread the land surrounding Holyhead Bay and extended at times, and to some extent, into the bay and out to sea. The proper course of the Montana was to keep three or four miles off the land at the South Stack and on a course about northeast by east, magnetic, until she had the Skerries abaft her beam, and then to take a course about east by south, magnetic, to Liverpool. There was a westerly variation of about two points between magnetic courses and true courses in the Irish Channel and adjacent waters. The Montana, on a course about northeast by east, magnetic, passed within a short distance of South Stack light-house and saw the high light there between one and two o'clock in the morning of March 13th. It came into sight bearing about southeast by east and about one point forward of the starboard beam of the Montana. Her officers expected to see it at a distance of about twenty miles off, bearing from east northeast to northeast by east. When they saw it first they thought it to be fifteen miles off,
and they remained of that opinion. It passed out of sight
38 abaft their beam, they supposing it was hidden by the hor-

izon. The master of the Montana did not ascertain by cross-bearings (which he might readily have made) the distance at which he was from the light. He lost the light because it was shut out from him by a fog which intervened between it and the Montana and thence he continued, with his engines working at full speed, and giving the Montana a speed through the water of about fourteen knots an hour, and on an east three-quarters south magnetic course, to which he had changed, which took him directly into Holyhead Bay, until after half past two o'clock. Before this time a man had been stationed at the fog-whistle of the Montana, who regularly blew it. At about half past two o'clock the master of the Montana heard the fog-gun on North Stack off his starboard quarter, abaft his starboard beam, and he thereupon changed the course of the steamer again to northeast by east, magnetic, but he continued his engines at full speed until 2.45 a. m., at which time the engines were put at half speed, which gave the steamer a speed through the water of between nine and ten knots per hour. Five minutes later the shore loomed up through
39 the fog, on the starboard bow, and orders were given to slow and stop the engines and to put them at full speed astern; but before these latest orders could be executed, the Montana ran ashore at Clegg's Point, in Church Bay. After leaving Tuskar, and up to one o'clock in the morning of March 13th, the Montana was running with a flood tide. Then there was slack water, and she afterwards encountered an ebb tide which ran from three to four knots an hour. At no time that night were any soundings taken on board of the Montana, though soundings would have indicated to her master that he was running rapidly onto the shore. The lights at Holyhead breakwater and the Skerries were not seen by those in charge of the navigation of the Montana and her lookouts, and those in charge of her navigation did not hear the fog-bell at South Stack or that at Holyhead breakwater or the siren at the Skerries, and they did not hear the fog-gun at North Stack until it was on their quarter. When they lost sight of the South Stack light they were within range of the Skerries light and ought to and would have seen it unless it was shut out by a fog. The water outside of Holyhead Bay ranged from twenty to eighty fathoms in depth, while the water in
40 Holyhead Bay ranged from five to seventeen fathoms in depth, regularly shoaling as the shore was approached. Almost immediately after the Montana ran ashore she commenced filling with water, and thereby her cargo was in large part destroyed or damaged. Portions of it were thereafter taken from the steamer and forwarded to Liverpool, and there delivered. The Montana was then floated and taken to Liverpool for repairs. Those in charge of the navigation of the Montana were negligent in that, without having taken cross-bearings of the light at South Stack and so determined their distance from the light, they took an east three-quarters south course before passing the Skerries, and without seeing the Skerries light, and in that they continued at full speed after hearing the fog-gun at North Stack, and in that they took a northeast by east magnetic course on hearing said fog-gun, instead of stopping and backing and taking a westerly course out of Holyhead Bay, and in

that they did not ascertain their position in Holyhead Bay by means of the lights and fog-signals, or by the use of the lead, or by stopping until they should, by those means or otherwise, learn where
41 their ship was. Part of the cargo of the Montana consisted of 16,190$\frac{3}{6}$ bushels of wheat in bulk, and 251$\frac{5}{16}$ bushels of wheat in bags; all of which had been shipped in good order and condition, on board of the Montana, on the 28th of February, 1880, by Logan & Preston, merchants of the city of New York, to be delivered to their order at Liverpool, England, under the bill of lading which is Exhibit C to the consent signed by the proctors for the respondent herein, dated November 8th, 1882, contained in the apostles. At or about the time of shipment the libellant, on a policy of insurance issued by it to Logan & Preston, and their report thereon, insured the said Logan & Preston in the sum of $27,500 upon the said wheat, which sum was the true value of the said wheat against all dangers and perils of the sea. Said policy of insurance, No. 52059, is Exhibit A to said consent and said report is Exhibit B to said consent. The said wheat was in part lost, and the remainder thereof damaged by the stranding of the Montana, and on the 15th of March, 1880, Logan & Preston, who, at all times from the time of shipment and insurance, had been the owners of said wheat, abandoned the same to the libellant, which aban-
42 donment was accepted, and thereafter the libellant paid to Logan & Preston, on the 5th day of June, 1880, the sum of $15,000 on account of said loss, and on the 21st day of June, 1880, the sum of $12,500, the balance of said loss. The libellant, after paying the necessary expenses of saving and marketing the wheat, received as net proceeds of salvage thereof the sum of £630 British sterling on May 31st, 1880, and the further sum of £436.15.10 on July 30th, 1881. Part of the cargo of the Montana consisted of 245 boxes of meats, owned and shipped by Jacob Dold, a merchant of Buffalo, N. Y., under through bills of lading from Buffalo to Liverpool, England, there to be delivered to his order, which bills of lading are Exhibits H and I to said consent. The libellant insured said Jacob Dold, under a policy and certificate of insurance, which policy is Exhibit G to said consent, and which certificate No. 31024 is Exhibit J to said consent, said certificates being payable to the order of said Jacob Dold, upon the said boxes of meats in the sum of $9,500, which was their value against all dangers and perils of the sea. The said meats were consigned by Jacob Dold to the firm of Watson,
43 Dun & Co., of Liverpool, for sale on his account and risk. He at the same time forwarded to Watson, Dun & Co. the said bills of lading and certificate of insurance. The said meats were shipped on board of the Montana at New York, in good order and condition, and were in part damaged and in part totally lost by the stranding of the Montana, and a portion thereof was abandoned to the libellant, and the abandonment was accepted. The libellant thereafter paid to Watson, Dun & Co., on account of said loss and damage, as correctly adjusted, £1,250, British sterling, on the 18th of May, 1880, and the further sum of £227 4 8 on the 30th of June, 1880, for

which sums Watson, Dun & Co. duly accounted to Jacob Dold. The libellant, after paying the necessary expenses of saving and marketing the meats abandoned to it, received, as net proceeds of salvage, on the 26th of May, 1880, the sum of £676 14 1, British sterling. Part of the cargo of the Montana consisted of 200 bales of cotton, shipped on board of the Montana, at New York, by Samuel B. Jones, general agent, on account of Alexander Burgess, a merchant of Nashville, Tennessee, who owned the cotton, to be trans-
44 ported to Liverpool, and to be delivered there to order, under a bill of lading, which is Exhibit N to said consent. At or before the time of shipment the libellant, under its policy, No. 51122, and its certificate, No. 21141, issued to said Burgess, said certificate being payable to his order, said policy being Exhibit L to said consent, and said certificate being Exhibit M to said consent, insured said Burgess on said 200 bales of cotton in the sum of $13,500, which was the value of said cotton, against all dangers and perils of the seas. The said Jones endorsed said bill of lading in blank and delivered it to said Burgess, and said Burgess consigned said bales of cotton to Brancker, Bexwell & Co., of Liverpool, England, for sale on his account and risk, and at the same time forwarded to them said bill of lading and certificate of insurance. The said bales of cotton were shipped on board of the Montana at New York, in good order and condition, and were partly lost and partly damaged by the stranding of the Montana, and a portion of the consignment was abandoned to the libellant, and it accepted the abandonment and paid to Brancker, Bexwell & Co., on ac-
count of the correctly adjusted loss of and damage to
45 the said bales of cotton, the sum of £319 19 9 British sterling on the 11th of June, 1880, and the further sum of £118 17 1 on the 12th of September, 1881, for which sums Brancker, Bexwell & Co. duly accounted to said Burgess. The libellant, after paying the necessary expenses of saving and marketing the bales of cotton abandoned to it, received as net proceeds of salvage the sum of £157 19 6 British sterling on the 1st of September, 1880.

On the foregoing facts I find the following conclusions of law.

The stranding of the Montana and the consequent loss of and damage to her cargo having been the direct result of the negligence of the master and officers of the steamer, the respondent is liable therefor. The libellant was duly subrogated to the rights of the insured against the carrier for the loss of and damage to the cargo insured by the libellant, and is therefore entitled to recover from the respondent the amount of such loss and damage. The libellant is entitled to a decree against the respondent for the following sums,
46 according to the report of the commissioner contained in the apostles: on account of the wheat, the sum of $27,500, with interest thereon from June 12th, 1880, less the sum of $5,191.52 salvage, with interest thereon from September 1st, 1880; on account of the meat, the sum of $3,895.77, with interest thereon from May 26th, 1880; on account of the cotton, the sum of $3,313.39, with interest thereon from September 1st, 1880, and for the costs in the district

court, taxed at the sum of $201.08, and for its costs in this court, to be taxed.

SAM'L BLATCHFORD,
Circuit Justice.

Endorsed: Findings of fact and conclusions of law. Filed July 31, 1884.

47 Circuit Court of the United States, Eastern District of New York.

THE PHENIX INSURANCE COMPANY
vs.
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

THE INSURANCE COMPANY OF NORTH AMERICA
vs.
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

BLATCHFORD, *J.*:

The libels in these cases allege the shipment of the goods on the Montana in good order, and the agreement of the respondent to deliver them in like good order at Liverpool; that she was one of a line of steamers which the respondent ran between New York and Liverpool; that the respondent was a common carrier of passengers and cargo between those ports; that the respondent received
48 the cargo and passengers of the Montana on this voyage as a common carrier, and that the respondent failed to deliver the goods, as agreed, but they were lost or destroyed and damaged by the stranding of the Montana. The particulars of the voyage and stranding are set forth, and it is alleged that the stranding and loss were due to the negligence of those managing the steamer in proceeding at too high a rate of speed, in not having a sufficient lookout, in going upon an improper and dangerous course, in not making due allowance for the influence of the ebb tide, in not having or in not using, and properly using, the usual and proper outfit and appurtenances of an ocean steamer, and, among others, the lead and the compass, and in not so heeding the shore lights and signals as would have indicated to them her dangerous position, and would have enabled them to regain and keep in a position of safety. The libels allege insurance by the libellants on the goods to amounts equal to or less than their value, payment of, or liability for moneys at and for the total loss or damage of the goods, damage equal to or greater than the amount of the insurance, and the subrogation of the libellants to the rights of the assured for the breaches of contract
49 by the respondent.

The answers deny that the respondent was a common carrier. They set up as defenses that the Montana was registered at Liverpool, which was her home port, where the respondent carried on its business, having an agency at New York; that the goods were received under bills of lading, which constituted the contracts; that the respondent assumed no greater risks than are expressed in

the bills of lading, and that the loss or damage to the goods was by perils of the sea and by causes in respect of which the respondent was exempt from liability by law and by the bills of lading. The answers set forth the particulars of the voyage and the stranding, and deny negligence, and allege that in respect to the employment of a skilled and licensed master and officers and the careful observation by them of the elements and everything which would, in the exercise of ordinary human skill, enable them to examine and judge the position of the vessel and to navigate her accordingly, and in respect to her seaworthiness and outfit and everything within the reasonable limits of skill and foresight the respondent com-
50 plied with its contracts and with all the requirements of law.

The bill of lading, Exhibit C, in the first-entitled case, is a through bill of lading issued at Nashville, Tennessee, headed "Overland and ocean bill of lading, Louisville and Nashville and South and North Alabama Railroad and the Williams and Guion Steamship Company, from Nashville, Tenn., to Liverpool, England." It covers 300 bales of cotton said to be "shipped in apparent good order," and "to be delivered in like good order and condition, * * * under the following terms and conditions, viz: That the said L. & N. & So. & No. Ala. railroads and their connections which receive this property shall not be liable for * * * loss or damage on any article or property whatever by fire or other casualty while in transit or while in deposit or places of transhipment or at depots or landings, at all points of delivery, nor for loss or damage by fire, collision, or the dangers of navigation while on seas, rivers, lakes, or canals. * * * It is further agreed that said L. & N. &. So. & No. Ala. railroads and their connections shall not be held accountable for any damage or any deficiency in packages after the same shall have been receipted for in good order by consignees or
51 their agents, at only the next carrier beyond the point to which this bill of lading contracts. * * * It is further stipulated and agreed that in case of any loss, detriment, or damage done to or sustained by any of the property herein receipted for during such transportation whereby any legal liability or responsibility shall or may be incurred, that company alone shall be answerable therefor in 'whose actual custody the same may be at the time of the happening of such loss, detriment, or damage,' and the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods; and it is further agreed that the amount of the loss or damage so accruing, so far as it shall fall upon the carriers above described, shall be computed at the value or cost of said goods or property at the place and time of shipment under this bill of lading. This contract is executed and accomplished and the liability of the L. and N. & So. & No. Ala. railroads and their connections, as common carriers thereunder, terminates on delivery of the goods or property to the steam-
52 ship company at New York, when the liability of the steamship commences, and not before; and it is further agreed that the property shall be transported from the port of New York to the port of Liverpool by the said steamship company, with liberty to

ship by any other steamship or steamship line, subject to the following terms and conditions, viz: To be delivered * * * in the like good order and condition at the aforesaid port of Liverpool (the acts of God, * * * barratry of master or mariners, * * * loss or damage resulting from * * * risk of craft * * * at sea in craft or on shore, * * * or any other accident of the seas, rivers, and steam navigation, of whatever nature or kind soever, excepted, whether any one or more of all such exceptions arise occur, or are in any way occasioned from or by the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or of any of the servants or employees of the ship-owners, or otherwise, however). * * *

"NOTICE.—In accepting this bill of lading the shipper or agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written
53 or printed." The bill of lading is dated at Nashville, Tennessee, February 4th, 1880, and is signed "B. F. Champe, G. A., agent severally, but not jointly."

The bill of lading, Exhibit H in the first-entitled case, is like Exhibit C, except that it is for 150 bales of cotton by other shippers, and is dated February 5th, 1880.

The bill of lading, Exhibit J in the first-entitled case, is like Exhibit H, except that it is for 100 bales of cotton, and is dated February 12th, 1880.

The bill of lading, Exhibit P in the first-entitled case, is dated at New York, March 1st, 1880, and covers 22 boxes of bacon and four tierces of hams, shipped in good order, and to be delivered in like good order and condition at the port of Liverpool ("the act of God, * * * barratry of master or mariners, * * * loss or damage resulting from * * * any of the following perils, whether arising from the negligence, default or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise howsoever), excepted, namely, risk of craft * * * at sea in craft or on shore * * * or from the consequence of any damage or injury
54 thereto, howsoever such damage or injury may be caused, * * * stranding, or other peril of the seas, rivers, or navigation, of whatever nature or kind soever, and howsoever such * * * stranding or other peril may be caused. * * * In accepting this bill of lading, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed."

The bill of lading, Exhibit C in the second-entitled case, is like Exhibit P in the first-entitled case, except that it is for 16,441$\frac{28}{60}$ bushels of wheat, in bulk and bags, by their shippers, and is dated February 28th, 1880.

The bill of lading, Exhibit H in the second-entitled case, is a through bill of lading, issued at Buffalo, New York, headed "Freight bill of lading, S. S. Montana, New York Central and Hudson River Railroad Company and the Guion Line Steamship Co., from Buffalo to Liverpool." It covers 100 boxes of middles, to be "shipped in apparent good order," and to be "subject to all the conditions ex-

pressed in the customary forms of bills of lading in use by
55 said steamships or steamship company at time of shipment,"
and " to be delivered in like good order and condition, * * *
under the following terms and conditions, viz: That the said New York Central & Hudson River Railroad Company and its connections, which receive said property, shall not be liable * * * for loss or damage on any article of property whatever, by fire or other casualty, while in transit or while in deposit or places of transhipment, or at depots or landings at all points of delivery, nor for loss or damage by fire, collision, or the dangers of navigation while on seas, rivers, lakes, or canals. * * * It is further agreed that said New York Central & Hudson River Railroad Company and its connections shall not be held accountable for any damage or deficiency in packages, after the same shall have been receipted for in good order by consignees or their agents, at or by the next carrier beyond the point to which this bill of lading contracts. * * * It is further stipulated and agreed that in case of any loss, detriment, or damage done to or sustained by any of the property herein receipted for during such transportation, whereby any legal
56 liability or responsibility shall or may be incurred, that company alone shall be held answerable therefor in whose actual custody the same may be at the time of the happening of such loss, detriment, or damage, and the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods; and it is further agreed that the amount of loss or damage so accruing, so far as it shall fall upon the carriers above described, shall be computed at the value or cost of the said goods or property at the place and time of shipment under this bill of lading. This contract is executed and accomplished, and the liability of the New York Central & Hudson River Railroad Company, as common carriers thereunder, terminates on the delivery of the goods or property to the steamship company at NewYork, when the liability of the steamship company commences, and not before; and it is further agreed that the property shall be transported from the port of New York to the port of Liverpool by the said steamship company, with liberty to ship by any other steamship or steamship line, subject to the follow-
57 ing items and conditions, viz: To be delivered * * * in the like good order and condition, at the aforesaid port of Liverpool, England (the act of God * * * barratry of master or mariners, * * * loss or damage resulting from * * * risk of craft * * * at sea in craft or on shore, * * * or any other accidents of the sea, rivers, and steam navigation of whatever nature or kind soever excepted, whether any one or more of all such exceptions arise, occur, or are in any way occasioned from or by the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or of any of the servants or employees of the ship-owners, otherwise however. * * * Notice.—In accepting this bill of lading the shipper or the agent of the owner of the property carried expressly accepts and agrees to all the stipulations, exceptions, and conditions, whether written or printed." The

bill of lading is dated at Buffalo, February 28th, 1880, and is signed "S. Strandguard, agent, severally, but not jointly," and also contains the words, "Buffalo, N. Y., to Liverpool, Eng., via New York."

The bill of lading, Exhibit I in the second-entitled case, is
58 like Exhibit H in the second-entitled case, except that it is for 145 boxes of bellies, shoulders, and middles.

The bill of lading, Exhibit N in the second-entitled case, is like Exhibit P in the first-entitled case, except that it is for 200 bales of cotton, and is dated March 2d, 1880.

The question of negligence in the Montana has been severely litigated, but, on the facts found, there is no reason for doubt as to the proper conclusion. Those facts are set forth in the finding of fact and establish the negligence. It is not necessary to discuss the evidence. That was done in the decision of the district judge, and his views and conclusions are in the main satisfactory. Taking the account given by the master in his testimony the district judge was of the opinion that it was untrue in important particulars; that it was not true that the ship ran only five minutes, and that at slow speed, on an east three-quarters south course; that if the master did not note the length of time that he ran on that course he was guilty of gross negligence, and that if he did note the time it was
59 incumbent on him to state it truly, and he had not done so.

The district judge was also of opinion that the ship, instead of passing the South Stack at a distance of fifteen miles, passed it close at hand, and that it was not true that the light changed its bearing to the master in one hour with the ship at full speed on the course she was on only two points. The district judge also commented upon the facts that the point marked by the master on the chart as that at which he lost the South Stack light and changed his course to east three-quarters south was a point where the Skerries light should have been in view, but it was not, and yet it did not occur to him that that light and the South Stack light might be obscured by a fog, and that, although both the South Stack light and the Skerries light ought to have been seen by him at the same time if he was where he supposed he was, he did not allow a doubt to arise nor exercise the reasonable care of using the lead when he changed his course to east three-quarters south; that the inability to see either of the two lights while on the latter course was indica-
60 tive of a fog, even before the North Stack gun was heard; that the doubling of the lookouts and the blowing of the whistle indicated that a fog was thought of; that the testimony of the engineer that the engine went at full speed until just as the ship struck is contradictory of the statement of the master that he ran at half speed on the last three-quarters south course and slow after changing back again, and that to make this last change after having the North Stack fog-gun abaft his starboard beam and knowing what it indicated, and to keep on the new course, was a gross mistake. The conclusion of the district judge was that on the master's own showing he failed to use reasonable care and skill in navigating his vessel on hearing the North Stack gun; that such negligence caused

the damage in question, and that it was not the result of a mere error of judgment.

In addition to the foregoing views, which are justified by the evidence and involve the conclusion that the master, when he changed from his course from east three-quarters south, had reasonable ground to believe that he had been mistaken all along as to the
61 position of his ship, and mistaken as to the distance of the South Stack light from him, during the time he saw it, it is to be remarked that, in determining on the course to run on changing from east three-quarters south, the master was bound not to ignore the fact that he had taken no cross-bearings of the South Stack light. The failure to take such cross-bearings might not alone be enough to convict the master of negligence, but the recollection of the fact that he had not taken such cross-bearings coupled with the recollection of the fact that he first saw the South Stack light in so unexpected a direction and believed that he passed it at so unusual a distance, and with the failure to see the Skerries light on losing the South Stack light, and with the hearing of the North Stack fog-gun abaft his starboard beam, stamp his action after hearing the gun as negligence and not error of judgment.

Stress is laid by the respondent on the provisions in the through bills of lading that "the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods." But that provision applies only to the transportation to New York and not to the ocean transit. The terms
62 and conditions of the transportation to New York by the railroads and their connections are separate and distinct in the through bills of lading from the terms and conditions of the ocean transportation. The agent signs as "agent severally, but not jointly." The terms and conditions of the ocean carriage contain no clause as to the benefit of insurance. No such clause is found in the bill of lading dated at New York, not issued in connection with railroad transportation.

The clause as to non-liability for the negligence of the master or crew or for any accidents of the seas, however happening, is common to all the bills of lading, and the respondent contends that under them it is not liable for the loss in these cases. The district judge held that the respondent was a common carrier. The evidence shows that the steamers of the line carried to Liverpool grain, provisions, and cotton, and brought back British products, iron, coal, salt, and dry-goods; that they also carried passengers; that the respondent advertised for cargo and passengers, and carried general cargo;
63 that it refused to carry what would taint other cargo or be dangerous to passengers, or would overload the vessel, but with those exceptions it took what cargo was offered if the rate of freight was satisfactory, and that the ships sailed on regular advertised days, and had been running since 1866, and had a regular pier in New York and a regular landing place in Liverpool. If this does not make the respondent and the ships common carriers nothing can do so. In 2 Kent's Comm., 598, it is said: "Common carriers undertake generally, and not as a casual occupation, and for all

people indifferently, to convey goods and deliver them at a place appointed for hire, as a business, and with or without a special agreement as to price. They consist of two distinct classes of men, viz., inland carriers by land or water and carriers by sea." It is also there said that in the aggregate body are included "owners of ships, vessels, and all water crafts, including steam-vessels and steam tow-boats, belonging to internal as well as coasting and foreign navigation." In 1 Parsons on Maritime Law, ch. 7, sec. 5, p. 173, it is said: "One who carries by water, in the same way and on the same terms as a common carrier by land, is also a com-
64 mon carrier; or, in other words, it is not the land or the water which determines whether a carrier of goods is a common carrier, but other considerations, which are the same in both cases;" and a common carrier is said, p. 174, to be "one who offers to carry goods for any person between certain termini or on a certain route."

It is contended for the respondent that a carrier of goods by a vessel may lawfully contract for exemption from liability for the negligence of his agents in charge of the navigation of the vessel.

In New Jersey Steam Navigation Co. *vs.* Merchants' Bank (6 How., 344) the navigation company, a carrier by water, by a steamboat between New York and Providence, carried goods for one Harnden, under an agreement *the* he alone should be responsible for the loss or injury of any property committed to his care, and that no risk was assumed by or could be attached to the company as proprietor of the steamboat. Harnden was an expressman, who carried on the steamboat, under that agreement, money in specie for the bank. The boat was burned through the negligence of the company in the equipment of the boat and the stowage of cargo, and the
65 negligence of her officers on the voyage. The court treated the company as liable as a carrier, and considered the question as to how far the special agreement had qualified its common-law liability. The court held that while a carrier might limit his liability by a special agreement, expressly assented to by both parties, the agreement in that case could not be considered as stipulating for "wilful misconduct, gross negligence, or want of ordinary care, either in the seaworthiness of the vessel, her proper equipment and furniture, or in her management by the master and hands;" that the burden was on the bank to show such negligence or want of care; that that was shown, and that the company was liable for the loss, notwithstanding the special agreement.

In Railroad Co. *v.* Lockwood (17 Wall., 357), a drover was travelling on a railroad on a stock train, to look after his cattle, on a free pass, under an agreement by which he assumed all risks of personal injury. He was injured while travelling on the stock-train, and sued the railroad company for damages. Negligence on its
66 part was proved and found by the jury. The Supreme Court held that the case, on its facts, was one of carriage of the drover for hire. The distinct question raised, as stated by the court, was: "Whether a railroad company carrying passengers for hire can lawfully stipulate not to be answerable for their own or their serv-

ants' negligence in reference to such carriage." The court says that a common carrier may, by special contract, limit his common-law liability; that that was held in New Jersey Steam Navigation Co. *v.* Merchants' Bank, and that the case of Lockwood seemed to be almost precisely within the category of the decision in 6 Howard, the contracts in both cases being general, exempting the carrier from all risk, and the court, in the case in 6 Howard, having held that it would not be presumed that the parties intended to include the negligence of the carrier or his agents in such exemption. The court, then, in the Lockwood case, proceeds to examine the question whether common carriers may excuse themselves from liability for negligence. It reviews the course of decisions in New York on the subject, and concludes that the courts
67 of New York had carried the power of the common carrier to make special contracts to the extent of enabling him to exonerate himself from the effect of even gross negligence; but it proceeds to examine the question as one of general commercial law, arising in a Federal court administering justice in New York, and having equal and co-ordinate jurisdiction with the courts of that State. It then discusses the cases on the subject in Pennsylvania, Ohio, Maine, and Massachusetts, and cites those in other States, and English cases, and cases as to both passengers and goods, in the Supreme Court. Among the cases as to goods were York Company *v.* Central Railroad, 3 Wall., 113; and Express Co. *v.* Kountz, 8 *Id.*, 342. In view of all these cases, it holds that a carrier having a regularly established business for carrying all or certain articles, and especially if that carrier be a corporation created for the purpose of the carrying trade, and the carriage of the articles is embraced within the scope of its chartered powers, is a common carrier; that a special contract about its responsibility does not
68 divest it of that character; that it cannot be permitted to stipulate for immunity for the negligence of its servants; that the business of the carrier is a public one, and those who employ the carrier have no real freedom of choice, and the carrier cannot be allowed to impose conditions adverse to public policy and morality; that freedom from liability for losses through sheer accident, or dangers of navigation which no human skill or vigilance can guard against, or for losses of money or valuable articles liable to be stolen or damaged, unless apprised of their character or value, or for like cases, is just and reasonable, and may be stipulated for, but that a public carrier cannot stipulate for exemptions which are unreasonable and improper, and which amount to an abdication of the essential duties of his employment; that a stipulation for exemption from liability for negligence is not just or reasonable; that a failure to exercise such care and diligence as are due from the carrier is negligence, and that the carrier remains liable for the negligence if the exemption stipulated for is unlawful The court then formulates its conclusions thus: 1. A common carrier cannot lawfully
69 stipulate for exemption from responsibility, when such exemption is not just and reasonable in the eye of the law. 2.

It is not just and reasonable, in the eye of the law, for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants. 3. These rules apply both to carriers of goods and carriers of passengers for hire, and with special force to the latter. 4. A drover travelling on a pass, such as was given in that case, for the purpose of taking care of his stock on the train, is a passenger for hire. Although the case of Lockwood was one of a passenger, and not of goods, the court took pains to say that the rules it laid down were applicable to a carrier of goods. The reason assigned was that the principles which demanded the existence of the rules in regard to passengers demanded that they should apply in regard to goods, though they applied with special force to passengers. Those principles were fully discussed in the opinion.

In Express Co. *v.* Caldwell (21 Wall., 264) it is stated to be
70 the settled law that the responsibility of a common carrier may be limited by an express agreement if the limitation be such as the law can recognize as reasonable and not inconsistent with sound public policy, and the cases in 3 and 17 Wallace are cited as holding that such limitation cannot extend to losses by negligence or misconduct. This view is again asserted in Railroad Co. *v.* Pratt (122 Wall., 123), and in Bank of Kentucky *v.* Adams Express Co. (93 U. S., 174). These cases involved goods carried on land.

No legal distinction can be perceived between goods carried by a common carrier on land and goods carried by one on the ocean, in respect to this question. It is urged, however, that the contract here was to be chiefly performed on board of a British vessel, and to be finally completed in Great Britain, and the damage occurred in Great Britain, and that the law of Great Britain, which is asserted to be different from the law here, is applicable to the case. As to this suggestion, it is sufficient to say that the answers expressly admit the jurisdiction of the district court, asserted
71 in the libels, and that it is not set up in the answers that the law of Great Britain, or any other law than that of *the* forum, is applicable to the case, nor is the law of Great Britain, if it be different, proved as a fact. The case must be decided according to the law of the Federal courts as a question of general commercial law.

Aside from this, it may be said that there was nothing in those contracts of affreightment to indicate any contracting, in view of any other law than the recognized law of such forum in the United States as should have cognizance of suits on the contracts.

As the libellants paid the losses and damage resulting from the negligence for which the respondent was liable, they were subrogated to the rights of the insured, and are entitled to maintain these suits to recover what they so paid. (Hall *v.* Railroad Cos., 13 Wall., 367, 373; The Montecello, 17 How., 152.)

It is urged for the respondent that as the libellants insured these risks, and were paid for so doing, they should bear the loss; that by the contract the shipper was the insurer against the negli-
72 gence, relieving the ship-owner of what would otherwise have been his risk, and reinsured the risk with the libellants, and that the agreement of the shipper to insure against the negligence

gave him the insurable interest which he insured. The answer to this view is that the libellants insured the goods against the risks specified in the policies, which risks covered the damage in question, and that they are entitled to the rights of the shippers under the contracts, and as the exemption agreed on would be of no avail as a defence to suits by the shippers, it is of no avail against the libellants in this forum.

The policy of the maritime law to limit the liability of ship-owners is invoked, and it is urged that they ought to be allowed to limit their liability by contract. The liability of ship-owners is limited by statute (Rev. Stat. U. S., secs. 4282 to 4289), and the extent to which such limitation is thus allowed may be considered as indicating the view of Congress as to how far legislation ought to prescribe exemption. It is said, in Railroad Co. *v.* Lockwood (17 Wall., 361), that these statutory provisions, as then enacted in the
73 act of March 3d, 1851 (9 U. S. Stat. at Large, 635), leave the ship-owner liable to the extent of his ship and freight for the negligence and misconduct of his employees, and liable without limit for his own negligence. In sec. 1 of the act of 1851 there was a proviso that nothing in the act contained should prevent the parties from making such contract as they pleased, extending or limiting the liability of ship-owners. As to that clause, it is said, in the same case, that that proviso neither enacts nor affirms anything, but simply expresses the intent of Congress to leave the right of contracting as it stood before the act. But that proviso is not re-enacted in the Revised Statutes, and, as a portion of the section containing it is embraced in a section of the reissue, the proviso is repealed by force of sec. 5596.

The amounts due to the libellants were ascertained by competent and sufficient proofs, the exceptions of the respondent to such competency and sufficiency having been waived and stricken out.

There must be decrees for the libellants, with costs, for the
74 amounts stated in the respective conclusions of law filed.

WILLIAM ALLEN BUTLER AND
THOMAS E. STILLMAN,
For the Libellants.
FRANKLIN A. WILCOX,
For the Claimant.

Endorsed: Opinion. Filed July 31, 1884.

75 United States Circuit Court, Eastern District of New York.

THE INSURANCE COMPANY OF NORTH AMERICA
vs.
THE LIVERPOOL & GREAT WESTERN STEAM COMPANY (Limited).

The respondent herein files exceptions to the findings of the court, and to the refusals of the court to find, as follows:

First. It excepts to each and every the conclusions of law as found.

Second. It excepts to the refusal to find the first-proposed conclusion of law of the respondent.

Third. It excepts to the refusal to find the second-proposed conclusion of law of the respondent.

Fourth. It excepts to the refusal to find the third-proposed conclusion of law of the respondent.

Fifth. It excepts to the refusal to find the fourth-proposed conclusion of law of the respondent.

76 Sixth. It excepts to the refusal to find the fifth-proposed conclusion of law of the respondent.

Seventh. It excepts to the refusal to find the sixth-proposed conclusion of law of the respondent.

Eighth. It excepts to the proposal to find the seventh-proposed conclusion of law of the respondent.

Ninth. It excepts to the refusal to find the eighth-proposed conclusion of law of the respondent.

That a final decree was made by the court affirming the decree of the district court in favor of the libellant herein for the sum of $35,140.40, with interest on $29,517.64, the principal, from August 8th, 1883, to date of decree, amounting to $1,810.02, andcosts in the district court, taxed at the sum of $201.08, and costs in this court, taxed at $93.25, amounting in all to the sum of $37,246.15.

And inasmuch as the said exceptions do not appear by the record of the decree of said court, the counsel for said respondent has prepared and caused this bill of exceptions to be settled as a record thereof, according to the form of the statute in such cases

77 made and provided, and the practice of the court, and to be signed and filed.

SAM'L BLATCHFORD. [L. S.]

Endorsed: Respondent's exceptions. Filed Aug. 28, 1884.

78 *Bill of Exceptions.*

U. S. Circuit Court, Eastern District of New York, in the Second Circuit.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant and Appellee,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent and Appellant.

This cause came on for trial before the Honorable Samuel Blatchford, one of the associate justices of the Supreme Court of the United States, in and for the eastern district of New York, in the second circuit, on the first and second days of July, 1884, on appeal by the respondent from the final decree of the district court of the United States for the eastern district of New York in favor of the libellant herein.

Counsel for the libellant read the libel and counsel for the respondent read the answer, as the same were contained in the apostles

79 transmitted from said district court to said circuit court. Counsel for the libellant then put in evidence the testimony taken and depositions read on behalf of the libellant in the district

court, as the same were contained in the apostles, it being considered that the counsel for libellant read the direct examination and that counsel for the respondent read the cross-examination.

Counsel for the respondent then put in evidence the testimony taken and the depositions read on behalf of the respondent in the district court, as the same were mentioned in the apostles, it being considered that the counsel for libellant read the cross-examination.

Here the testimony was closed.

Counsel for the respondent thereupon proposed, on behalf of respondent, the following findings of fact and conclusions of law to be found by the court, viz:

(There were three actions brought against the respondent
80 and appellant herein, respectively, by the Ulster Marine Insurance Company, The Insurance Company of North America, and the Phenix Insurance Company, at or about the same time. These actions involved the same questions of fact and law to be decided and were tried at the same times; hence the proposed findings were printed together as hereto attached. The action of the Ulster Marine Insurance Company involved less than five thousand dollars, and has not been decided.)

81 *Proposed Findings of Fact and Conclusions of Law on the Part of the Respondent and Appellant.*

U. S. Circuit Court, Eastern District of New York.

THE ULSTER MARINE INSURANCE COMPANY (Limited), Libellant and Appellee,

against

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent and Appellant.

THE INSURANCE COMPANY OF NORTH AMERICA

against

THE SAME

THE PHENIX INSURANCE COMPANY *against* THE SAME.

82 First. The libellant, The Ulster Marine Insurance Company (Limited), have for many years and still are a corporation duly organized and existing under the laws of Great Britain and Ireland, for transacting business as insurers, among other things marine risks and adventures.

The libellants, The Insurance Company of North America, for many years have been and still are a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, for transacting business as insurers, among other things marine risks and adventures.

During such times the said libellant had an agency in London, England, in the care of Emil Ernst Wendt, agent for the adjustment and settlement of losses. The losses mentioned in their libel, except

the losses on the Logan & Preston shipment of grain, were adjusted with the said agent and were paid through him in said London.

The libellants, The Phenix Insurance Company, for many years have been and still are a corporation duly organized and existing under and by virtue of the laws of the State of New York, for transacting business as insurers, among other things marine risks and adventures.

And during said times they had an agency in Liverpool, England, in the care of Cole and Kirkman, agents for the adjustment and settlement of losses. The losses referred to in their libel herein were adjusted by the said agents, and were paid by them in Liverpool.

Respondents are and were at the times herein mentioned also a corporation organized and existing under the laws of Great Britain, and in the month of March, 1880, were the owners of the steamship Montana, a registered vessel of Great Britain, hailing from Liverpool, where her said owners were domiciled.

83 Second. On a voyage of the said vessel from her home port, to wit, Liverpool, to New York and return, and on or about the first day of March, 1880, while the said vessel was lying in the port of New York, the firm of John Sinclair & Co. shipped on board of said steamship certain merchandise, to wit, 80 boxes of bacon and 10 tierces of lard (see Exhibits B, C), to be transported in and on board of said steamship to the said port of Liverpool.

Third. On or about February 28th, 1880, the firm of Logan & Preston shipped in and on board of said steamship, at New York, $16{,}441\frac{28}{60}$ bushels of wheat, in bulk and in 85 ship's bags, to be transported in and on board of said vessel to the port of Liverpool.

That on or about February 28th, 1880, Jacob Dold shipped at Buffalo a quantity of provisions, known as "middles, shoulders, and bellies" (see Exhibits H & I), to be transported by the New York Central & Hudson River Railroad Company and the steamship "Montana" to Liverpool.

On or about March 2d, 1880, at New York, Samuel D. Jones shipped in and upon said steamship "Montana" 200 bales of cotton, to be transported in and upon said steamship "Montana" to the port of Liverpool.

Fourth. On or about the first day of March, 1880, one Archibald Baxter shipped on board of the said steamship "Montana" 22 boxes of bacon and 4 tierces of ham, to be transported in and upon said steamer to the port of Liverpool.

That on or about February 5th, 1880, Gilbert Parks & Co. shipped, at Nashville, Tennessee, 150 bales of cotton, to be transported thence by the Louisville and Nashville Railroad and the Williams & Guion Steamship Company to Liverpool, England, and that the same was thereafter received on board of the said steamship "Montana."

84 Fifth. That on or about February 4, 1880, Ordway, Dudley & McGuire shipped, at Nashville, Tennessee, 300 bales of cotton, to be transported by the Louisville & Nashville and South and North Alabama railroad and the Williams & Guion Steamship Company

thence to Liverpool, and that the same was thereafter received on board of the said steamship Montana.

That on or about February 12th, 1880, Gilbert Parks & Company, at Nashville, Tennessee, shipped 100 bales of cotton, to be transported by the Louisville and Nashville railroad and the Williams & Guion Steamship Company thence to Liverpool, and the same was thereafter received in and on board the said steamship Montana.

Sixth. That on the respective shipments so as aforesaid made bills of lading were executed and delivered by the said respondents and accepted by the shippers thereof. (See Exhibits B and C), (Insurance Company North America), H (Insurance Company North America), I (Insurance Company North America), C (Phenix Insurance Company), H (Phenix Insurance Company, J (Phenix Insurance Company), and P (Phenix Insurance Company).

These bills of lading provided, among other things, for exemption from liability of the said steamship or her owners for or on account of "barratry of master or mariners, * * * loss or damage resulting from any * * * accidents of the seas, rivers, and steam navigation of whatever nature or kind soever, * * * whether any one or more of all such exceptions arise, occur, or are in any way occasioned from or by the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or any of the servants or employees of the ship-owners, or otherwise however, or from the consequence of any damage or injury
85 thereto, howsoever such damage or injury may be caused, collision, stranding, or other peril, and howsoever such collision, stranding, or other peril may be caused. * * *

That said bills of lading, Exhibits H and I (Insurance Company North America), and also C, H, and J (Phenix Insurance Company), provided also that the carrier shall have the full benefit of any insurance that may have been effected upon or on account of said goods, and also that any damage which shall fall upon the carrier shall be computed at the value or cost of the said goods or property at the place and time of shipment.

Seventh. To protect themselves against the risks thus assumed *by* the respective shippers caused to be effected insurance with the respective libellants, and the respective policies provided, among other matters, as follows, to wit:

"Touching the adventures and perils which the said company is contented to bear, and does take upon itself in the voyage so insured as aforesaid, they are * * * barratry of the master and mariners, and all other perils, losses, and misfortunes that shall come to the hurt, detriment, or damage of the aforesaid subject matter of this insurance."

Eighth. The said steamer left the port of New York on or about the 2d of March, 1880, with the said goods so as aforesaid laden on board, touching at Queenstown, and left Queenstown about 2.15 p. m., shore time, on the 12th of March, 1880. She reached the vicinity of Tuska about 8 o'clock, and took her departure from Tuska, then bearing nearly abreast, about four miles off, which is the usual and proper distance away from that point to lay her course up the

Irish Channel. The course taken was north 42 degrees east by compass, which is the usual course, which course would leave the Skerries, the first turning point to Liverpool, bearing southeast about 2 miles (fol. 541).

86 Ninth. Upon the coast of Ireland is a light known as South Arklow, which is on a light-ship. Under ordinary circumstances, taking the distance she was from Tuska at the time she took her departure, she would pass about two miles out of the range of that light, which light could be seen at a distance of about 10 miles on a clear night.

On the west side of the channel there is a light known as South Stack, and about one mile E. N. E. is a light known as North Stack. Farther up the channel is Holyhead breakwater, on the westernmost part of Holyhead Island. Farther up and about 7 to 8 miles from South Stack, in a direction E. N. E., magnetic (fol. 123), is the Skerries light. (For certainty the court is respectfully referred to the chart.)

The steamer's speed was about 14 knots an hour, and it was expected to pass the South Stack light, situated on the Welsh coast, about two o'clock the following morning. The tide was about high in the channel about midnight, so that from Tuska to the South Stack light the steamer would have about four hours' flood and two hours' ebb. The ship had a list to starboard, and the tide setting strongly on the starboard quarter. It was a spring tide, and the effect of the tide was such as to set the vessel more towards the Irish coast than the Welsh coast, which, as the steamer passed abreast of the South Arklow light, situated on the Irish coast, about 9.43 p. m., was found to be the case as she passed within the range of that light, about 9 miles from it, when at ordinary slack water she would pass about two miles outside of the range, which range was about ten miles. The wind was light from the southward and eastward and the night a very clear, moonlight night.

Tenth. On the South Stack there are two lights, one 170 feet high—range in clear weather, 20 to 30 miles. There is also a low
87 light 40 feet above the water—range in clear weather, 3 to 4 miles, which is only lit in foggy weather; also a bell—range in fine weather, 3 to 4 miles; not so far in foggy weather.

On the North Stack there was a light and a gun.

On the end of Holyhead breakwater there was a light from 60 to 70 feet high—range in clear weather, 3 to 4 miles.

On the Skerries there was a light 80 to 90 feet above the water, range 15 miles in clear weather. There was also a fog-whistle or siren, which could be heard about eight miles.

Eleventh. At a little after one o'clock the light on the South Stack was made, as near as the captain and officers could judge (there was at this time on the bridge the captain, second, and fourth officers, besides the wheelman), bearing about southeast by east by compass, and then distant, according to the best judgment that then could be formed, about 15 miles. At 1.20 o'clock it bore abeam, and the ship was at the time upon the same course she had been previously steering, and running at her usual speed. Under the circumstances

they had expected to make that light bearing northeast by east, and distant 20 miles or thereabouts.

Shortly after the Montana made the lights the Holyhead steamer, bound to Ireland, distant at least a half a mile, which steamer was sailing at from 17 to 18 knots an hour, and she had seen the lights of the Montana for fifteen minutes, the wheel of the Montana was ported a few points, and her engine was stopped and backed, only for a few moments, when her course was changed back to the original course which she had been on. Soon after the South Stack light was lost, bearing at that time about off the starboard quarter or abaft the beam (fol. 463).

88 At this time it was a clear, bright night; there was no indication of fog, and it was judged by the three officers on the bridge that the South Arklow light had "dipped" below the horizon; that they were outside of the range of it. The usual course was to pass the Skerries, about two miles to the northward and westward of the Skerries, and then change to the eastward for Liverpool, and it was their object to pick up the Skerries light.

It was judged that if they continued their course it would take them outside of the range of the Skerries light altogether, and would carry them beyond the Isle of Man, up the North Channel. It was important that they should see the Skerries light. At this time the lookout was doubled. There were four men on the lookout, all forward on the bow. This was done to take every precaution, it being in a crowded vicinity.

To pick up the Skerries lights the course was changed from north 42 degrees east to east three-quarters south, and the vessel ran on such course about five minutes, when a gun was heard, which was supposed to be from the North Stack.

The wind was about southwest, and it was judged that the gun could be heard about ten miles. The sound of the gun was judged to be on the starboard quarter (fol. 577). On hearing the gun the ship was altered back to her original course. Her speed on the east by south course was half speed, and after that slow—about four knots, with the tide against her, over the ground. After running about ten minutes something black was seen on the starboard bow, which was supposed to be a fog bank, when immediately the helm was put "hard-a-starboard," when the vessel stranded in Church Bay, which was about four miles from Holyhead breakwater. In consequence of this stranding the cargo, or certain portions of it, became lost and damaged, and these actions are brought to recover such damage.

89 Twelfth. The first intimation that any one had on the steamer that there was a fog on the land was the hearing of a gun from the North Stack. At South Stack there was a fine blue sky on night of the 12th, after which a "driving or lifting fog came up." The fog lifted at intervals sufficiently for the light-keeper at Holyhead to see the town lights and see the steamboats going in and out of the harbor.

Varian, on the "Earle Spencer," left Holyhead at 1.50, passed the Breakwater light without seeing it. After he got outside the fog

cleared a little, and he saw the breakwater astern and South Stack light abeam. At all times it was clear on the water.

Thirteenth. In respect to the lights and sound signals none of them were either seen or heard by the witnesses at the respective stations, except the gun on the North Stack, and on the "Montana" no light was seen except the South Stack light and no sound heard except the north Stack gun.

Fourteenth. The water is deep off from the mouth of Holyhead Bay out to the distance of six to ten miles, uniformly deep, from 24 to 25 fathoms, and therefore the casting of the lead would not have aided the ship at all to determine her position.

Conclusions of Law.

First. The respondent was not a common carrier in respect to the goods in question.

Second. He was only a ship carrier, having the right to reject, both by the laws of Great Britain and this country, the carriage of any goods offered to it.

90 Third. The respondent is fully protected by virtue of the exceptive clauses in the bills of lading. In respect to a part of the cargo so shipped the carrier is to have the benefit of any insurance effected by the shipper. The libellant having paid the loss, therefore, can maintain no action against the carrier. The respondent furnished the carrier with a seaworthy vessel, well equipped and appointed, with most experienced officers, who were carefully and vigilantly attending to their duties, together with a double and careful lookout at the time the ship stranded. No neglect can therefore be charged against the respondent.

Fourth. The cause of the action was the capricious fog, which settled under the South Stack light, and which rising shut out the light and led the officers to suppose that it was "dipping" below the horizon and they were not within its range.

This cannot be considered an error of judgment, but, if an error of judgment, there has been no case of neglect made out sufficient to charge the respondent.

Fifth. The clause in several of the bills of lading provide that the loss or damage, so far as it shall fall upon the carriers, shall be computed at the value or cost of the goods at the place and time of the shipment under this bill of lading.

There has been no proof of such value and no proof to warrant any finding in respect to damages.

Sixth. The mere payment of the loss by the insurance company will not entitle it to a recovery, unless if subrogated, or it appears that there was an express agreement or assignment, which does not appear.

91 Seventh. There can be no recovery against the respondent for any amount of damage, unless by public sale or due appraisement, and due, timely, and sufficient notice to the respondent. The testimony does not show this.

Eighth. The libel should be dismissed with costs.

BEEBE & WILCOX,
Respondent's Proctors.

The court filed with the clerk of said circuit court the findings of fact and conclusions of law as found by the court in the form following, viz:

92 Circuit Court of the United States for the Eastern District of New York.

THE INSURANCE COMPANY OF NORTH AMERICA

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

In this case I find the following facts:

The respondent, The Liverpool and Great Western Steam Company (Limited), is a corporation organized under the laws of Great Britain, and in the month of March, 1880, and for a long time prior thereto, was the owner of the steamer Montana. The libellant, The Insurance Company of North America, has been for many years and still is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania for transacting the business of insurance, including marine risks. During said
93 time it had an agency in London, England, for the adjustment and settlement of losses, and the losses referred to herein, except the losses on the Logan & Preston shipment of grain, were adjusted by said agency, and were paid through it in London. The Montana was an ocean steamer, built of iron, and performed regular service as a common carrier of merchandise and passengers between the ports of Liverpool, England, and New York, in the line commonly known as the Guion Line. By her and by other ships in that line the respondent was such common carrier. On the 2d of March, 1880, the Montana left the port of New York on one of her regular voyages, bound for Liverpool, England, with a full cargo, consisting of about twenty-four hundred tons of merchandise, and with passengers. She stopped at Queenstown on the afternoon of the 12th of March, and thence proceeded on her voyage. She passed Tuskar Rock, on the extreme southeastern portion of Ireland, at about eight o'clock in the evening of the 12th of March, and thence took a course up and across the Irish Channel. The course she took would ordinarily have carried her outside of the range of the South Arklow light, which is a light on the east coast of Ireland; but with
94 the wind, tides, and currents as they were that night, she passed within range of that light, and about nine miles off, at 9.45 p. m. On passing the South Arklow light, the next light charge of the navigation of the Montana expected to make was the South Stack light, on the coast of Wales, at the entrance of Holyhead Bay. The master of the Montana was on the bridge and in charge of her navigation. The light-house on South Stack carried two lights; one, the high light, was about 170 feet above high water; it was white in color, and exhibited in all directions at sea, with a range of from twenty to thirty miles in clear weather; it was a revolving light, making one complete revolution in six minutes, and it showed a white flash light every minute. The other

light was also white; it was about 40 feet above high water, and was a semi-revolving light, exhibiting every minute and a half in all directions between east northeast and west by north; its range in clear weather was from three to four miles, but it was regularly lit only in foggy or thick weather. Both of these lights were lit and burning all through the night of March 12th. A fog-bell was regularly sounded at South Stack from ten o'clock in the
95 night of March 12th until six o'clock in the morning of March 13th. The bell weighed two and a quarter tons, and was operated on by a hammer, weighing about ninety-six pounds, which struck the bell on the outside at intervals of fifteen seconds, and was worked by means of clock-work and a caloric engine. The sound was a powerful one, and its range was from three to four miles. The high light on the South Stack was established in 1809, and has ever since been regularly maintained. The fog-bell had been established for about twenty years, and has since then been regularly sounded in foggy weather. About east northeast, magnetic, from South Stack, and distant about one mile therefrom, was a fog-gun station, known as North Stack. This fog-gun station had been established about twenty years, and from midnight of March 12th until four o'clock in the morning of March 13th the fog-gun was fired regularly every ten minutes. The gun was a twenty-four pounder, and was each time charged with three pounds of powder and a large junk-wad to give extra sound, the range of the sound being between five and six miles when the fog was thick, with the wind, and about seven miles when the fog
96 lifted. The fog-gun station since it was established has been regularly maintained, and the fog-gun fired regularly in foggy weather. About two miles east, magnetic, from North Stack was the Holyhead breakwater light-house. This light-house was at the outer end of Holyhead Breakwater, and it carried a fixed red light at a height of from sixty to seventy feet above high water, with flashes every seven and one-half seconds. The range of the light in clear weather was from three to four miles, and the range of the flash was about fourteen miles. The light was established in 1873, and has since then been regularly maintained. At the breakwater light-house was a fog-bell weighing about five hundred weight, which was operated upon by two hammers worked by clock-work and striking the bell on the outside three times in quick succession, at intervals of fifteen seconds; the range of the sound was from a mile and a half to two miles. The bell was established in 1873, and was regularly rung in foggy weather. It was in operation from midnight of the 12th of March until five o'clock in the morning of the 13th of March. About five miles north northeast, magnetic, from Holyhead Breakwater light-house, and across Holyhead Bay,
97 was the Skerries light-house. The Skerries light-house was about northeast, magnetic, from South Stack light-house, and distant therefrom between seven and eight miles. It was situated on a small island about two miles off Carmel Head and about two or three miles north northwest, magnetic, from Church Bay. It carried a stationary white light between eighty and ninety feet above low-

water mark, exhibiting in all directions at sea and in Holyhead Bay, with a range of about sixteen miles. It was burning all through the night of March 12th. It was established between seventy and eighty years ago, and has been regularly maintained since. There was at Skerries light-house a fog-horn or siren, worked by two powerful caloric engines at a pressure of forty pounds to the square inch. The sound made was shrill and powerful, and had a range of eight miles in foggy weather, and the sound was regularly given from ten o'clock at night of March 12th until half past four o'clock in the morning of March 13th, at intervals of three minutes. This fog-horn or siren had been established for several years, and
98 it has been regularly maintained ever since. All through the night of March 12th, until five o'clock in the morning of March 13th, a fog overspread the land surrounding Holyhead Bay and extended at times, and to some extent, into the bay and out to sea. The proper course of the Montana was to keep three or four miles off the land at the South Stack and on a course about northeast by east, magnetic, until she had the Skerries abaft her beam, and then to take a course about east by south, magnetic, to Liverpool. There was a westerly variation of about two points between magnetic courses and true courses in the Irish Channel and adjacent waters. The Montana, on a course about northeast by east, magnetic, passed within a short distance of South Stack light-house and saw the high light there between one and two o'clock in the morning of March 13th. It came into sight bearing about southeast by east and about one point forward of the starboard beam of the Montana. Her officers expected to see it at a distance of about twenty miles off, bearing from east northeast to northeast by east. When they saw it first they thought it to be fifteen miles off, and they remained of that opinion. It passed out of sight
99 abaft their beam, they supposing it was hidden by the horizon. The master of the Montana did not ascertain by cross-bearings (which he might readily have made) the distance at which he was from the light. He lost the light because it was shut out from him by a fog which intervened between it and the Montana, and thence he continued, with his engines working at full speed, and giving the Montana a speed through the water of about fourteen knots an hour, and on an east three-quarters south magnetic course, to which he had changed, which took him directly into Holyhead Bay, until after half past two o'clock. Before this time a man had been stationed at the fog-whistle of the Montana, who regularly blew it. At about half past two o'clock the master of the Montana heard the fog-gun on North Stack off his starboard quarter, abaft his starboard beam, and he thereupon changed the course of the steamer again to northeast by east, magnetic, but he continued his engines at full speed until 2.45 a. m., at which time the engines were put at half speed, which gave the steamer a speed through the water of between nine and ten knots per hour. Five minutes later the shore loomed up through the fog on the starboard bow,
100 and orders were given to slow and stop the engines and to put them full speed astern, but before these latest orders could

be executed the Montana ran ashore at Cleggs Point, in Church Bay. After leaving Tuskar, and up to one o'clock in the morning of March 13th, the Montana was running with a flood tide. Then there was slack water, and she afterwards encountered an ebb tide, which ran from three to four knots an hour. At no time that night were any soundings taken on board of the Montana, though soundings would have indicated to her master that he was running rapidly onto the shore. The lights at Holyhead Breakwater and the Skerries were not seen by those in charge of the navigation of the Montana, and her lookouts and those in charge of her navigation did not hear the fog-bell at South Stack, or that at Holyhead Breakwater, or the siren at the Skerries, and they did not hear the fog-gun at North Stack until it was on their quarter. When they lost sight of the South Stack light they were within range of the Skerries light, and ought to and would have seen it, unless it was shut out by a fog. The water outside of Holyhead Bay ranged from
101 twenty to eighty fathoms in depth, while the water in Holyhead Bay ranged from five to seventeen fathoms in depth, regularly shoaling as the shore was approached. Almost immediately after the Montana ran ashore she commenced filling with water, and thereby her cargo was in large part destroyed or damaged. Portions of it were thereafter taken from the steamer and forwarded to Liverpool and there delivered. The Montana was then floated and taken to Liverpool for repairs. Those in charge of the navigation of the Montana were negligent in that, without having taken cross-bearings of the light at South Stack, and so determined their distance from the light, they took an east three-quarters south course before passing the Skerries, and without seeing the Skerries light, and in that they continued at full speed after hearing the fog-gun at North Stack, and in that they took a northeast by east, magnetic, course on hearing said fog-gun, instead of stopping and backing and taking a westerly course out of Holyhead Bay, and in that they did not ascertain their position in Holyhead Bay by means of the lights and fog-signals, or by the use of the lead, or by stopping until they should, by those means or otherwise, learn where their
102 ship was. Part of the cargo of the Montana consisted of 16,190$1\frac{3}{60}$ bushels of wheat in bulk and 251$\frac{5}{60}$ bushels of wheat in bags, all of which had been shipped in good order and condition on board of the Montana, on the 28th of February, 1880, by Logan & Preston, merchants, of the city of New York, to be delivered to their order at Liverpool, England, under a bill of lading, which is Exhibit C, to the consent signed by the proctors for the respondent herein, dated November 8th, 1882, contained in the apostles. At or about the time of shipment the libellant, on a policy of insurance issued by it to Logan & Preston, and their report thereon, insured the said Logan & Preston in the sum of $27,500 upon the said wheat, which sum was the true value of the said wheat, against all dangers and perils of the sea. Said policy of insurance, No. 52059, is Exhibit A to said consent, and said report is Exhibit B to said consent. The said wheat was in part lost and the remainder thereof damaged by the stranding of the Montana, and on the 15th of March, 1880,

Logan & Preston, who, at all times from the time of shipment and insurance, had been the owners of said wheat, abandoned the
103 some to the libellant, which abandonment was accepted, and thereafter the libellant paid to Logan & Preston, on the 5th day of June, 1880, the sum of $15,000 on account of said loss, and on the 21st day of June, 1880, the sum of $12,500, the balance of said loss. The libellant, after paying the necessary expenses of saving and marketing the wheat, received as net proceeds of salvage thereof the sum of £630, British sterling, on May 31st, 1880, and the further sum of £436 15 10 on July 30th, 1881. Part of the cargo of the Montana consisted of 245 boxes of meats, owned and shipped by Jacob Dold, a merchant of Buffalo, N. Y., under through bills of lading from Buffalo to Liverpool, England, there to be delivered to his order, which bills of lading are Exhibits H and I to said consent. The libellant insured said Jacob Dold under a policy and certificate of insurance, which policy is Exhibit G to said consent, and which certificate, No. 31024, is Exhibit J to said consent, said certificates being payable to the order of said Jacob Dold upon the said boxes of meats in the sum of $9,500, which was their value, against all dangers and perils of the sea. The said meats were consigned by Jacob Dold to the firm of Watson, Dun &
104 Co., of Liverpool, for sale on his account and risk. He at the same time forwarded to Watson, Dun & Co. the said bills of lading and certificate of insurance. The said meats were shipped on board of the Montana at New York, in good order and condition, and were in part damaged and in part totally lost by the stranding of the Montana, and a portion thereof was abandoned to the libellant, and the abandonment was accepted. The libellant thereafter paid to Watson, Dun & Co., on account of said loss and damage, as correctly adjusted, £1,250, British sterling, on the 18th of May, 1880, and the further sum of £227 4 8 on the 30th of June, 1880, for which sums Watson, Dun & Co. duly accounted to Jacob Dold. The libellant, after paying the necessary expenses of saving and marketing the meats abandoned to it, received, as net proceeds of salvage, on the 26th day of May, 1880, the sum of £676 14 1, British sterling. Part of the cargo of the Montana consisted of 200 bales of cotton, shipped on board of the Montana at New York by Samuel B. Jones, general agent, on account of Alexander Burgess, a merchant of Nashville, Tennessee, who owned the cotton, to be transported to
105 Liverpool, and to be delivered there to order, under a bill of lading, which is Exhibit N to said consent. At or before the time of shipment the libellant, under its policy, No. 51123, and its certificate, No. 21141, issued to said Burgess, said certificate being payable to his order, said policy being Exhibit L to said consent, and said certificate being Exhibit M to said consent, insured said Burgess on said 200 bales of cotton in the sum of $13500, which was the value of said cotton, against all dangers and perils of the seas. The said Jones endorsed said bill of lading in blank, and delivered it to said Burgess, and said Burgess consigned said bales of cotton to Brancker, Bexwell & Co., of Liverpool, England, for sale on his account and risk, and at the same time forwarded to them said bill

of lading and certificate of insurance. The said bales of cotton were shipped on board of the Montana at New York, in good order and condition, and were partly lost and partly damaged by the stranding of the Montana, and a portion of the consignment was abandoned to the libellant, and it accepted the abandonment, and paid to Bancker, Bexwell & Co., on accont of the correctly-adjusted loss of and
106 damage of the said bales of cotton, the sum of £319 19 9, British sterling, on the 11th of June, 1880, and the further sum of £118 17 1 on the 12th of September, 1881, for which sums Brancker, Bexwell & Co. duly accounted to said Burgess. The libellant, after paying the necessary expenses of saving and marketing the bales of cotton abandoned to it, received, as net proceeds of salvage, the sum of £157 19 6, British sterling, on the 1st of September, 1880.

On the foregoing facts I find the following conclusions of law:

The stranding of the Montana, and the consequent loss of and damage to her cargo, having been the direct result of the negligence of the master and officers of the steamer, the respondent is liable therefor. The libellant was duly subrogated to the rights of the insured against the carrier for the loss of and damage to the cargo insured by the libellant, and is, therefore, entitled to recover from the respondent the amount of such loss and damage. The libellant is entitled to a decree against the respondent for the following
107 sums, according to the report of the commissioner contained in the apostles:

On account of the wheat, the sum of $27,500, with interest thereon from June 12th, 1880, less the sum of $5,191.52 salvage, with interest thereon from September 1st, 1880; on account of the meat, the sum of $3,895.77, with interest thereon from May 26th, 1880; on account of the cotton, the sum of $3,313.39, with interest thereon from September 1st, 1880, and for the costs in the district court, taxed at the sum of $201.08, and for its costs in this court, to be taxed.

SAM'L BLATCHFORD,

Circuit Justice.

Exhibits mentioned in findings of fact are hereto annexed in book form, marked " Exhibit Statement "A."

108 U. S. Circuit Court, Eastern District of New York, in the Second Circuit.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant and Appellee,

vs.

THE LIVERPOOL & GREAT WESTERN STEAM CO. (Limited), Respondent and Appellant.

Admitted Facts and Papers Respecting Insurance.

Part I.

EXHIBIT STATEMENT "A." NOV. 9, 1882. B. L. B.

109 "EXHIBIT A."

No. 52,059. No. 937.

By the President and Directors of the Insurance Company of North America.

Logan and Preston, on account of whom it may concern—

CARGO.

Sum insured, $——

NEW YORK, 9th Sept., 1880.

It is hereby agreed that this policy is extended one year from this date.

C. & S.

Premium, $——

Less $——

In cases of loss to be paid to them or order—do make insurance, and cause —— dollars to be insured, lost or not lost, from New York to Liverpool and Glasgow, on merchandise, to cover all shipments, their own, or in trust, or on commission, or consigned to Patterson Bros. & Co.; the risk assumed by this company to commence as soon as the merchandise is on board vessel at any United States Atlantic port, whether known to Logan & Preston or not, but to be reported by them as soon as known; free of particular average unless vessel be stranded, sunk, burnt, or in collision, including risk of craft to and from vessel upon all kinds of lawful goods and merchandise, laden or to be laden, on board the good steamer or steamers of lines as below, whereof —— —— is master for this present voyage, or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel or the master thereof is or shall be named or called.

Beginning the adventure upon the said goods and merchandise from and immediately following the loading thereof on board of the said vessel, at as aforesaid, and so shall continue and endure until the said goods and merchandise shall be safely landed at as aforesaid; and it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises hereby insured are valued at invoice cost & ten per cent., settlements monthly in cash, less per ten cent. on the $\frac{1}{4}\%$ rate. This policy to remain in force twelve months from date thereof, unless terminated sooner by mutual consent.

Touching the adventures and perils which the said Insurance Company of North America is contented to bear and take upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandise, or any part thereof. And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, their factors, servants, and assigns, to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said goods and merchandise or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to the charges whereof the said insurance company will contribute according to the rate and quantity of the sum herein insured, having been paid the consideration for this insurance by the assured or their assigns, at and after the rate of

White Star	Line,	New York to L'pool, ¼%.	Anchor Line, mail st'rs only, New York to Glasgow	¼%
Cunard	"		American Line, including st'rs Lord Clive & Lord Gough, Phila. to L'pool	¼%
Inman	"		Cunard Line & Allen Line, Boston to Liverpool	¼%
National	"		Leyland Line, Boston to Liverpool	⅜%
Williams & Guion	"		Allen Line, Baltimore do	⅜%

And in case of loss such loss to be paid in thirty days after proof of loss and proof of interest in the said mdse., via Halifax & for St. John's, N. S., the amount of the premium or the note given for the premium, if unpaid, and all sums due to the company from the assured, when such loss becomes due, being first deducted, and all sums coming due, being first paid or secured to the satisfaction of the assurers; but no partial loss or particular average shall in any case be paid, unless amounting to five per cent.: Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said Insurance Company of North America shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Insurance Company of North America shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises, subsequent in date to this policy, the said Insurance Company of North America shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made. It is also agreed that the prop-

erty be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war; also warranted not to abandon in case of capture, seizure, or detention until after condemnation of the property insured, nor until ninety days after notice of said condemnation is given to the company; also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade; but in the event of blockade to be at liberty to proceed to an open port and there end the voyage, any stipulations in this policy to the contrary notwithstanding.

MEMORANDUM.—It is also agreed that bar, bundle, rod, hoop, and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wickerware, and willow, manufactured or otherwise, salt, grain of all kinds, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, vegetables, and roots, rags, hempen yarn, brooms, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature are warranted by the assured free from average, unless general; hemp, tobacco stems, matting, and cassia, except in boxes, free from average under twenty per cent., unless general; and sugar, flax, flaxseed, and bread are warranted by the assured free from average under seven per cent., unless general; and coffee in bags or bulk, pepper in bags or bulk, and rice, free from average under ten per cent., unless general.

Warranted by the insured free from damage or injury from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by stranding or collision with another vessel.

If the voyage aforesaid shall have begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

In witness whereof the said president and directors of The Insurance Company of North America have caused these presents to be signed by their president or vice-president, in the city of Philadelphia, State of Pennsylvania, and this policy is made and accepted upon the above express conditions, but shall not be valid unless countersigned by said company's duly authorized attorneys in the city of New York.

WM. S. DAVIS, *V. President.*

Countersigned at New York this 9th day of September, A. D. 1879.

CATLIN & SATTERTHWAITE, *Attorneys.*

[On margin.]

NEW YORK, 1*st August*, 1881.

By mutual agreement this policy is hereby continued for one year from 1st August on the same terms and conditions.

C. & S., *Att'ys.*

All risks to be reported as soon as known and amounts declared as soon as ascertained.

It is understood and agreed that this policy shall not be deemed as continued in force for more than one year from the date hereof, unless otherwise agreed upon and endorsed hereon.

It is understood that either party is at liberty to cancel this policy at any time, on giving notice to that effect, which is not, however, to prejudice any risk then pending.

Warranted by the assured free from capture, seizure, detention, or any attempt thereat, and from all loss or damage therefrom, or in consequence thereof, whether by men-of-war, privateers, or public or private armed vessels of any kind or nature whatsoever, any stipulations in this policy to the contrary notwithstanding.

Proofs of loss to be authenticated by the agent of the company, if there be one where such proofs are taken, or in case there be none, by the agent of the New York board of underwriters.

The sound value at the port or place of destination is to be deemed not to exceed the purchasing price at the shipping port and ten per cent. added thereto, exclusive of duty and freight.

NEW YORK, 1*st Jan'y*, 1880.

Risks covered under this policy are to be held covered in case of deviation, add'l premium to be charged when risk is known, including all risks of craft to and from the vessel, each lighter or craft to be considered as if separately insured.

C. & S., *Att'ys.*

(Endorsed.)

NEW YORK, 5*th June*, 1880.

Pay fifteen thousand $\frac{00}{100}$ dollars on ac. loss per Montana, ins'd under this policy Feb'y 24th, 1880.

$15,000. C. & S., *Att'ys.*

NEW YORK, 21 *June*, 1880.

Pay twelve thousand five hundred dollars, balance of total loss per Montana, ins'd, Feb'y 24, '80.

$12,500. C. & S.

NEW YORK, 23*rd Aug.*, 1881.

Pay eight hundred and fifty-four $\frac{12}{100}$ dollars, G. A., per S. S. Batavia, N. Y. to L'p'l, insured 16 January, 1881—£176 9 5 @ £4.84.

$854.12. C. & S., *Att'ys.*

110 EXHIBIT B.

11797.

To the Insurance Company of North America:

Please enter on open policy of Logan & Preston $27,500 on R. 85 bags, cont'g 251 15/60 bus. grain; wheat in bulk in for'd bin, 16,190 13/60 bus., valued at sum insured, on board the steamer Montana, at and from New York to Liverpool.

68.75.

Bill of lading dated ——.

Time of sailing, ——.

Approved.

C. & S., *Attorneys.*

If within the terms and conditions of the policy.

New York, 24th February, 1880.

Where built, —. When built, —. Tons, —. Y. M., —. Rate. Insp.

Proof of loss to be authenticated by the agent of the company, if there be one at the place such proofs are taken.

Warranted by the assured free from loss or expense arising from capture, seizure, restraint, detention, or destruction, or the consequence of any attempt thereat, whether lawful or unlawful, and whether by the act of any belligerent nation or governments of seceding or revolting States, or by unauthorized or lawless persons therein, or otherwise; and whether occurring in a port of distress or otherwise, anything in this policy to the contrary notwithstanding.

111 EXHIBIT "C."

Shipped, in good order and well conditioned, by Logan & Preston, in and upon the steamship called Montana, now lying in the port of New York and bound for Liverpool, via Queenstown, sixteen thousand four hundred and forty-one 28/60 bus. wheat, in bulk and in eighty-five ship's bags, being marked and numbered as in the margin, and are to be delivered from the ship's deck, where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of Liverpool—

GUION LINE.

In bulks in for'd bin	16,190 13/60
In 85 bags R	251 15/60
	16,441 28/60

16,441 28/60 at 5d. per 60 lbs	£342 10 7
Primage	17 2 6
Total	£359 13 1

(The act of God, the Queen's enemies, pirates, robbers, thieves, vermin, barratry of master, or mariners, restraint of princes, rulers, or people, loss or damage resulting from insufficiency in strength of packages, from sweating, leakage, breakage, or from stowage or contact with other goods, or from any of the following perils (whether arising from the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise howsoever) excepted, namely, risk of craft, explosion or fire at sea in craft, or on shore, boilers, steam, or machinery,

or from the consequences of any damage or injury thereto, howsoever such damage or injury may be caused, collision, stranding, or other peril of the seas, rivers, or navigation of whatever nature or kind soever, and howsoever such collision, stranding, or other peril may be caused, with liberty, in the event of the said steamer putting back to New York, or into any port, or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods by any other steamer, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations)—

unto order of order, or to orders, assigns, freight for the said goods, being paid immediately on landing, without any allowance of credit or discount, at the rate of five pence (5*d.*) sterling per 60 lbs., gross weight, delivered, with primage and average customary.

In witness whereof the master or agents of the said ship hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Weight, measure, contents, quality, brand, and value unknown. The goods to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship. The master porterage of the delivery of the cargo to be done by the consignees of the ship, and the expense thereof to be paid by the receivers of cargo. The owners of the ship will not be responsible for money, documents, gold, silver, bullion, specie, jewelry, precious stones, or metals, paintings, and statuary, unless bills of lading are signed therefor, and the value thereof therein expressed.

In accepting this bill of lading the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed.

Dated in New York, Feb. 28th, 1880.

For the agents, F. H. LE SAGE.

Endorsed: Logan & Preston.

112 EXHIBIT D.

17 WILLIAM ST., NEW YORK, 15*th March*, 1880.

P. O. box 3053.

Messrs. Catlin & Satterthwaite, New York.

GENTLEMEN: We are to-day advised by our Liverpool friends that our shipment of wheat per "Montana" will be a total loss. We therefore beg to inform you that we abandon the same to you & claim a total loss under our policy.

Yours faithfully, LOGAN & PRESTON.

113 EXHIBIT "E."

NEW YORK, *5th June*, 1880.

Received from Insurance Co. of North America fifteen thousand $\frac{00}{100}$ dollars on ac. of loss per "Montana," from N. Y. to Liverpool, insured Feb'y 24th, 1880, undr O. P. 937 of Logan & Preston.

$15,000.00.

LOGAN & PRESTON,
Per MORICE & PRESTON.

[On margin:] Catlin & Satterthwaite.

114 EXHIBIT F.

NEW YORK, *21st June*, 1880.

Received from Insurance Co. of North America twelve thousand five hundred dollars, balance of total loss mdse. per steamer "Montana," from New York to Liverpool, insured Feb'y 24th, 1880, under O. P. 937 of Logan & Preston, the assured hereby assigning to the company all their right, title, & interest in the property covered by the above insurance.

$12,500.00.

LOGAN & PRESTON,
Per MORICE & PRESTON.

[On margin:] Catlin & Satterthwaite.

115 "EXHIBIT G."

Gold.

By the President and Directors of the Insurance Company of North America.

Sum insured $—
Premium, $—
Policy, 1.00
$—

This policy of insurance witnesseth that the president and directors of the Insurance Company of North America, by these presents, do cause Claudius H. Woodworth to be insured in the sum of — dollars, lost or not lost, at and from towns and places in the United States to ports and places in Europe. Rates of premium to be as follows: From Buffalo by rail to New York; thence by steamer to Antwerp ---------- $\frac{5}{8}$, summer and
" " ---------- $\frac{7}{8}$, winter;
and by steamer to Liverpool ---------- $\frac{1}{2}$, summer;
" " ---------- $\frac{5}{8}$, winter;
—, net;

For account of whom it may concern loss, if any, payable to holders of certificates issued by Claudius H. Woodworth, as per terms thereof, in gold, upon mdse., &c., free of particular average, unless caused by stranding, sinking, burning, or collision, on board of the vessel or vessels, steamer or steamers, called the ——, whereof is master for this present voyage —— ——, or whosoever else shall be master of said vessel, or by whatever name or names the said vessel or master thereof shall be named or called—

Beginning the adventures upon the said vessel as aforesaid, and upon the freight or property from and immediately following the loading of said property on board said vessel, and to continue during the voyage aforesaid on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the freight and property until the property shall be safely landed.

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. And in case of any loss or misfortune resulting from any peril insured against the party insured engages for himself or themselves, his or their factors, servants, and assigns, to sue, labor, travel for, and use all reasonable and proper means for the security, preservation, relief, and recovery of the property insured or any part thereof; to the charges whereof the said company engages to contribute in proportion as the sum insured bears to the whole sum at risk; and the acts of the assured or assurers, or of their joint or respective agents, in preserving, securing, or saving the property insured, in case of danger or disaster, shall not be considered or held to be a waiver or acceptance of abandonment. The company having been paid the consideration for this insurance by the assured, or his or their assigns, at the rate of — per cent., the premium on risk to be fixed at the time of endorsement, and such clauses to apply as the company may insert as the risks are successively reported.

Touching the adventures and perils which the said insurance company are contented to bear and take upon them, they are of the seas, fires, pirates, rovers, assailing thieves, jettisons, and also barratry of the master and mariners, unless the assured be owner or part owner of the vessel (embezzlement and illicit trade excepted in all cases), and such other perils, losses, or misfortunes that have or shall come to the hurt, detriment, or damage of the said vessel, freight, or property, or any part thereof, as may be assumed by the policy and expressed therein: Provided, and it is expressly agreed, that the insurers shall not be liable for damage or injury to goods by dampness, change of flavor, or by being spotted, discolored, musty, or mouldy, unless the same be caused by actual contact of sea water with the article so damaged; and in case of partial loss by sea damage to dry goods, cutlery, or other hardware, the loss shall be ascertained by a separation of the damaged from the undamaged portion of a damaged package or packages, respectively, and the sale of the damaged portion or portions only, and not otherwise; and the same practice shall obtain as to all other merchandise, so far as practicable; and provided also that the said company shall not be liable for any claim for or loss by seizure, capture, or detention, or the consequences of any attempt thereof.

It is also agreed that bar, bundle, rod, hoop, and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wicker-ware, willow, manufactured or otherwise, cheese, salt, grain of all kinds, seeds of all kinds, fruits, whether preserved or otherwise, dry fish, vegetables, and roots, prepared or otherwise, rags, hempen yarn, bags,

cotton bagging, and other articles used for cotton bagging, pleasure carriages, household furniture, musical instruments, looking-glasses, skins, and hides, and all articles perishable in their own nature are warranted by the assured free from average (except general), unless it happen by stranding and amount to twenty per cent. on the whole aggregate value of such articles; hemp, leaf tobacco, tobacco stems, bread, Indian meal, matting, and cassia (except in boxes) free from average (unless general) under fifteen per cent. on the whole value of such articles; coffee, in bags or bulk; pepper, in bags or bulk; rice, sugar, flax, and saltpetre, free from average (unless general) under seven per cent. on the whole aggregate value of such articles.

And in case of loss such loss to be paid in sixty days after proof of loss, proof of interest, and adjustment exhibited to the assurers, the amount of the premium or the note given for the premium, if unpaid, and all sums due to the company from the assured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the assurers, but no loss or average shall in any case be paid under five per cent. on each passage, unless general.

Provided always, and it is further agreed, that if the said assured shall have made any other assurance on the premises aforesaid prior in date to this policy then this insurance company shall be answerable only for so much of the amount as such prior insurance may be deficient towards fully covering the premises hereby insured, without any deduction for the insolvency of all and any of the underwriters, and shall return the premium upon so much of the sum by them insured as they shall be by such prior insurance exonerated from. And in case of any insurance upon the said premises subsequent in date to this policy this insurance company shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premises by them received in the same manner as if no such subsequent assurance had been made. It is also agreed that the vessel, freight, or property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of seizure and detention for on account of any illicit or prohibited trade, or any trade in articles contraband of war; and also free from any charge, damage, loss, or claim on account of injury to any vessel or her cargo arising from collision of the vessel herein named with such other vessel. It is further agreed that in case a total loss shall be claimed for or on account of any damage or charge to the said vessel the only basis for ascertaining her value shall be her valuation in this policy, and if not valued herein then her actual value at the port to which she belonged at the time of inception of this risk; and it is also agreed that if the above-named vessel, upon a regular survey, shall be declared unseaworthy by reason of her being unsound or rotton, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be responsible on this policy; and if the voyage aforesaid shall have been begun, and shall have terminated before the date of this

policy, then there shall be no return of premium on account of such termination of the voyage. And it is further agreed that one-third shall be deducted from the cost of all repairs of injuries and losses on the vessel by the perils insured against (except on anchors and copper) as a commutation for the average difference between new and old, the remains of all articles replaced being considered as salvage, and accordingly deducted from the net loss. And instead of deducting one-third from the cost of recoppering there shall be deducted two and a half per cent. of the net cost of recoppering, after deducting the value of the old copper and nails for each and every month the copper shall have been on the vessel at the time when it is taken off; and if the copper shall have been on forty months or more, the cost of recoppering shall be wholly excluded. It is also agreed that when the goods insured arrive at this port no claim for loss or damage shall be allowed unless the assured or consignee give notice to the company of the same within ten days after the landing; and also of any public sale intended to be made in consequence of such loss or damage, at least two days previous to such sale, and that the company are not liable for loss or damage by breakage, leakage, wet, or exposure on goods insured as on deck. It is also agreed that no liability is incurred under this policy for leakage on molasses or other liquids unless occasioned by stranding or collision with another vessel. It is further agreed that the assured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall in such case have the liberty to proceed to another port not blockaded, which shall be substituted for the blockaded port. It is also agreed that in all cases of return premium for short property or over insurance ten per cent. of the return premium shall be returned by the insurers. It is also agreed that no assignment of this policy shall be valid unless the premium has been paid or the note given therefor is further secured by a previous endorsement of the person or persons for whose benefit said assignment is intended, and unless the consent of the insurers be first obtained.

In witness whereof the president and directors of The Insurance Company of North America have caused their common seals to be affixed to these presents, in Philadelphia, the eighteenth day of July, one thousand eight hundred and seventy-seven.

WM. S. DAVIS,
2d Vice-President.

[On margin.]

All risks to be reported as soon as known and amounts declared as soon as ascertained.

It is expressly understood and agreed that the company shall not be liable for any claim for loss by capture, seizure, detention, or destruction, or the consequences of any attempt thereat by or arising from the acts of any belligerent nation or people, notwithstanding anything to the contrary in this policy.

Proof of loss to be authenticated by the agent of the company, if there be one, at the place where such proofs are taken.

116, 117—See bills of lading, inserted.

118 *Certificate of Insurance.*

EXHIBIT J.

Incorporated 1794.

$9,530, gold. OFFICE OF THE No. 31024.

INSURANCE COMPANY OF NORTH AMERICA,

May 1, 1880. OF PHILADELPHIA. 13073 / 3013

PHILADELPHIA, *March 1st*, 1880.

MARKS AND NUMBERS.

[W] 15 1 | 25
[W] 16 1 | 100
Brand, "Jacob Dold."
[W] A 1
Brand, 'Albert'
[W] 21 1 | 3
[W] 22 1 | 2
Brand, W. P. Low & Co.
[W] 17 1 | 25
[W] 18 1 | 25
[W] 19 1 | 25
[W] 20 1 | 25
Brand, Jacob Dold.

This is to certify that on the 1st of March, 1880, this company insured under policy made for C. H. Woodworth ninety-five hundred and thirty dollars in gold on two hundred forty-five (245) boxes of meats, subject to 10 % average, valued at ninety-five hundred and thirty dollars in gold, shipped on board of the railroad and Guion Line of steamers at and from Buffalo, New York, to New York city, and at and thence to Liverpool, England; and it is hereby understood and agreed that in case of loss such loss is payable to the order of Jacob Dold on surrender of this certificate.

This certificate represents and takes the place of the policy, and conveys all the rights of the original policy-holder (for the purpose of collecting any loss or claims) as fully as if the property was covered by a special policy direct to the holder of this certificate, and free from any liability for unpaid premiums.

WM. S. DAVIS,
V. President.

GREVILLE E. FRYER,
Ass't Secretary.

Stamp, Five Shillings, Cancelled.

It is especially agreed that all claims and loss for damage under this certificate shall be submitted for approval to Mr. E. E. Wendt, 15 Fenchurch Buildings, London, to whom immediate notice of any casualty must be given, and be paid in sterling at the counting-house of Messrs. Brown, Shipley & Co., in London, at the rate of four dollars and ninety-five cents ($4.95), gold, to the pound sterling, or in France, at the counting-house of Messrs. Drexel, Harjes & Co., Paris, at five francs six and one-quarter centimes to the dollar, gold; claims to be adjusted according to the usages of Lloyds.

Mr. E. E. Wendt is the attorney of the company, on whom service of process can be made.

NOTICE.—To conform with the revenue laws of Great Britain, in order to collect a claim under this certificate it must be stamped within sixty days after its receipt in the United Kingdom.

(Endorsed.)

Received of Messrs. Brown, Shipley & Co. the sum of twelve hundred and fifty pounds on account of claim for general and particular average under this certificate.

Received cheque £1,250.

WATSON, DUNN & CO.,
Per HUGH GRICE.

£1,250. (Penny stamp, cancelled.)

30th June, 1880. 19 | 5 | 80.

Received from Messrs. Brown, Shipley & Co. the sum of two hundred and twenty-seven pounds 4 | 8 for payment of balance for above claim under this certificate.

WATSON, DUNN & CO.,
Per HUGH GRICE.

£227 4 8. (Penny stamp, cancelled.)

30th June, 1880. 2 | 7 | 80. £227 4 8.

JACOB DOLD.

118½ EXHIBIT "K."

In consideration of the sum of fourteen hundred & seventy-seven pounds four shillings and eight pence, paid * us by The Insurance Co. of North America, we hereby transfer to the said underwriters all right, title, and interest in and to a shipment of 245 boxes bacon, per British steam vessel "Montana," —— ——, master, bound from New York to Liverpool; and we hereby undertake to deliver up or account for the remaining copies of the bill of lading, if hereafter called upon to do so; and we authorize the said underwriters to take, in their name, but at their own risk and expense, all steps that they may consider necessary or advisable for the purpose of pursuing all rights and remedies under the bill of lading, and we expressly transfer to them all right & title to the funds now lying in charge of the Liverpool Salvage Association, or other parties, the stakeholders for all concerned, as well as to all proceeds of goods, whether identifiable or unidentifiable, attaching to this shipment, for which the receipt of the said company, or their representatives, shall be final.

* Paid	1,250
To be paid.....	227 4 8
	1,477 4 8

Liverpool, 22 June, 1880.

WATSON, DUNN & CO.

[Six pence inland rev. stamp.]

119 "EXHIBIT L."

No. 51122. No. 708.

By the President and Directors of The Insurance Company of North America.

Alexander Burgess, on account of whom it may concern—

CARGO.
Sum insured, $——
Premium, $——
Less $——

In cases of loss to paid to him, or order, in gold, do make insurance, and cause —— dollars to be insured, lost or not lost, at and from New York and southern port or ports to ports in Europe direct or via other ports, commencing the risk upon signing of mate's receipt or bill of lading covering risk of lighterage where customary, on cotton, his own or purchased by him for account of other parties, or consigned to him for shipment, except such shipments as Alexander Burgess, prior to shipment thereof, receives advice are insured in Europe. In case of shipment by a vessel not approved by the company the same shall have the right to cancel the risk or charge an additional premium, due notice to be sent to the assured; from New York risks only binding when approved by the company; from ports south of New York all shipments to be covered absolutely from time of delivery of cotton, as above, the assured agreeing to notify the company, as soon as possible after receipt of shipment name, such advice by telegraph or mail, to be dated prior to shipment, or any known accident to the property or vessel, subject to particular average, as customary, premiums payable on demand, less twenty per cent., in lieu of script and interest, upon all kinds of lawful goods and merchandise, laden or to be laden, on board the good vessel or vessels or steamer or steamers, whereof —— —— is master for this present voyage, or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called—

Beginning the adventure upon the said goods and merchandise from and immediately following the loading thereof on board of the said vessel, at —— as aforesaid, and so shall continue and endure until the said goods and merchandise shall be safely landed at —— as aforesaid. And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods and merchandise hereby insured are valued at invoice cost & ten per cent. additional, unless otherwise agreed upon at time of endorsement.

Touching the adventures and perils which the said Insurance Company of North America is contented to bear and take upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the

said goods and merchandise, or any part thereof. And in case of any loss or misfortune it shall be lawful and necessary to and for the assured, his factors, servants, and assigns, to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance, nor shall the acts of the insured or insurers in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment, to the charges whereof the said insurance company will contribute according to the rate and quantity of the sum herein insured, having been paid the consideration for this insurance by the assured, or his assigns, at and after the rate of ——.

And in case of loss such loss to be paid in thirty days after proof of loss and proof of interest in the said cotton ——, the amount of the premium, or the note given for the premium, if unpaid, and all sums due to the company from the assured, when such loss becomes due, being first deducted, and all sums coming due, being first paid or secured to the satisfaction of the assurers; but no partial loss or particular average shall in any case be paid, unless amounting to five per cent.: Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said Insurance Company of North America shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured, and the said Insurance Company of North America shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from; and in case of any insurance upon the said premises subsequent in date to this policy the said Insurance Company of North America shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade or any trade in articles contraband of war; also warranted not to abandon, in case of capture, seizure, or detention, until after condemnation of the property insured, nor until ninety days after notice of said condemnation is given to the company; also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade; but, in the event of blockade, to be at liberty to proceed to an open port and there end the voyage, any stipulation in this policy to the contrary notwithstanding.

MEMORANDUM.—It is also agreed that bar, bundle, rod, hoop, and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wickerware and willow, manufactured or otherwise, salt, grain of all kinds, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, vegetables and roots, rags, hempen yarn, brooms, bags,

cotton bagging and other articles used for bags or bagging, pleasure carriages, household furniture, skin and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature are warranted by the assured free from average, unless general; hemp, tobacco stems, matting, and cassia, except in boxes, free from average under twenty per cent., unless general, and sugar, flax, flaxseed, and bread are warranted by the assured free from average under seven per cent., unless general, and coffee in bags or bulk, pepper in bags or bulk, and rice free from average under ten per cent., unless general.

Warranted by the insured free from damage or injury from dampness, change of flavor, or being spotted, discolored, musty, or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea, damage to dry goods, cutlery, or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise, as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by stranding or collision with another vessel.

If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

In witness whereof the said president and directors of The Insurance Company of North America have caused these presents to be signed by their president or vice-president in the city of Philadelphia, State of Pennsylvania, and this policy is made and accepted upon the above express condition, but shall not be valid unless countersigned by said company's duly authorized attorneys in the city of New York.

CHARLES PLATT, *V. President.*

Countersigned at New York this 2d day of October, A. D. 1876.
CATLIN & SATTERTHWAITE, *Attorneys.*

[On margin.]

All risks to be reported as soon as known and amounts declared as soon as ascertained.

*It is understood and agreed that this policy shall not be deemed as continued in force for more than one year from the date hereof, unless otherwise agreed upon and endorsed hereon.

It is understood that either party is at liberty to cancel this policy at any time, on giving notice to that effect, which is not, however, to prejudice any risk then pending.

Warranted by the assured free from capture, seizure, detention, or any attempt thereat, and from all loss and damage therefrom, or in consequence thereof, whether by men-of-war, privateers, or public or

* Waived. C. & S.

private armed vessels of any kind or nature whatsoever, any stipulation in this policy to the contrary notwithstanding.

Proofs of loss to be authenticated by the agent of the company, if there be one where such proofs are taken, or, in case there be none, by the agent of the New York board of underwriters.

The sound value at the port or place of destination is to be deemed not to exceed the purchasing price at the shipping port and ten per cent. added thereto, exclusive of duty and freight.

(Endorsed.)

NEW YORK, *December 14th*, 1877.

It is hereby agreed that this policy shall cover the railroad risk from places in the interior to the seaboard, where the same is in connection with the marine risk to be covered under this policy. The railroad risk shall commence upon the signing of the railroad company's receipt or bill of lading.

CATLIN & SOTTHWORTH, *Att'ys.*

120 *Certificate of Insurance.*

EXHIBIT M.

Incorporated 1794.

$13,500, gold. OFFICE OF THE No. 21491.

INSURANCE COMPANY OF NORTH AMERICA,

May 26, 1880. OF PHILADELPHIA. N. Y.

$\frac{13073}{3134}$

CATLIN & SATTERTHWAITE, Managers for New York.

NEW YORK, 13*th February*, 1880.

MARKS AND NUMBERS.

10180

K K, 100
(K K)

200 bales cotton.

Wisconsin.
Montana.

This is to certify that on the 13th February, 1880, this company insured under policy made for Alexander Burgess thirteen thousand five hundred dollars in gold on 200 B/c., valued at sum hereby insured, shipped on board of the railroad and steamer or str. at and from Nashville via New York to Liverpool; and it is hereby understood and agreed that in case of loss such loss is payable to the order of Alexander Burgess on surrender of this certificate.

This certificate represents and takes the place of the policy, and conveys all the rights of the original policy-holder (for the purpose of collecting any loss or claims) as fully as if the property was covered by a special policy direct to the holder of this certificate, and free from any liability for unpaid premiums.

The president and directors of The Insurance Company of North America, by their attorneys—

CATLIN & SATTERTHWAITE.

Stamps, 5 and 2, Cancelled.

It is especialy agreed that all claims for loss and damage under this certificate shall be submitted for approval to Mr. E. E. Wendt, 15 Fenchurch Buildings, London, to whom immediate notice of any casualty must be given and be paid in sterling at the counting-house of Messrs. Brown, Shipley & Co., in London, at the rate of four dollars and ninety-five cents ($4.95) gold to the pound sterling, or in France, at the counting-house of Messrs. Drexel, Harjes & Co., Paris, at five francs six and one-quarter centimes to the dollar, gold; claims to be adjusted according to the usages of Lloyds.

Mr. E. E. Wendt is the attorney of the company on whom service of process can be made.

NOTICE.—To conform with the revenue laws of Great Britain, in order to collect a claim under this certificate it must be stamped within sixty days after its receipt in the United Kingdom.

(Endorsed.)

Received of Messrs. Brown, Shipley & Co. the sum of three hundred and nineteen pounds 19/9 in settlement of claim for particular average under this certificate.

£319 19 9.

11th June, 1880. 12th June, 1880.

BRANCKER, BOXWELL & CO.,
Per ED. DAVIES.

(Penny stamp, cancelled.)

Received from Messrs. Brown, Shipley & Co. the sum of four hundred pounds sterling for payment on account of partial loss and general average under this certificate.

£400.

28 June, 1880. 29th June, 1880.

BRANCKER, BOXWELL & CO.,
Per ED. DAVIES.

(Penny stamp, cancelled.)

121 EXHIBIT "N."

Shipped, in good order and well conditioned, by Sam. B. Jones, G. A., in and upon the steamship called Montana or Wisconsin, now lying in the port of New York and bound for Liverpool, via Queenstown, two hundred bales of cotton, weighing one hundred and two thousand nine hundred and thirty-three (102,933) pounds, being marked and numbered as in the margin, and are to be delivered from the ship's deck, where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of Liverpool—

GUION LINE
United States Mail Steamers.

NEW YORK: 29 Broadway. LIVERPOOL: 11 Rumford St.

(K. K.)	100 bales.		
K. K.	100 bales.		
	200	"	
102,933 at $\frac{7}{32}$ per lb.	£93	16	0
Primage	4	13	9
Total	£98	9	9

(The act of God, the Queen's enemies, pirates, robbers, thieves, vermin, barratry of master or mariners, restraint of princes, rulers, or people, loss or damage resulting from insufficiency in

strength of packages, from sweating, leakage, breakage, or from stowage or contact with other goods, or from any of the following perils (whether arising from the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise howsoever) excepted, namely, risk of craft, explosion or fire at sea in craft, or on shore, boilers, steam, or machinery, or from the consequences of any damage or injury thereto, howsoever such damage or injury may be caused, collision, stranding, or other peril of the seas, rivers, or navigation of whatever nature or kind soever, and howsoever such collision, stranding, or other peril may be caused, with liberty, in the event of the said steamer putting back to New York, or into any port, or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods by any other steamer, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations)— unto order —— or to —— assigns, freight for the said goods being paid immediately on landing, without any allowance of credit or discount, at the rate of seven thirty-seconds of a penny (sterling) per pound gross weight, delivered, with customary primage and general average, if any, according to York-Antwerp rules.

Weight, measure, contents, quality, brand, and value unknown. The goods to be taken from alongside by the consignee, immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship. The master porterage of the delivery of the cargo to be done by the consignees of the ship, and the expense thereof to be paid by the receivers of cargo. The owners of the ship will not be responsible for money, documents, gold, silver, bullions, specie, jewelry, precious stones or metals, paintings, and statuary, unless bills of lading are signed therefor and the value thereof therein expressed.

In accepting this bill of lading the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed.

In witness whereof the agents of the said ship hath affirmed to two bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in New York, March 2d, 1880.

L. H. LE SAGE.

For 70 bales cotton per Wisconsin, 85. 31, 3, '80.

Endorsements: Sam. B. Jones, G. A.; Alex. Burgess; Brancker, Boxwell & Co. Delivered fifty-four (54) bales, 3 April, '80. Ex. "Montana." Liverpool Salvage Association. H. D. Hunter, for sec'y. Delivered eighteen bales cotton 13th April, 1880. Ex. "Montana." Liverpool Salvage Association. H. D. Hunter, for sec'y.

122 United States Circuit Court, Eastern District of New York.

THE INSURANCE COMPANY OF NORTH AMERICA
vs.
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

The respondent herein files exceptions to the findings of the court, and to the refusals of the court to find, as follows:

First. It excepts to each and every the conclusions of law as found.

Second. It excepts to the refusal to find the first-proposed conclusion of law of the respondent.

Third. It excepts to the refusal to find the second-proposed conclusion of law of the respondent.

Fourth. It excepts to the refusal to find the third-proposed conclusion of law of the respondent.

Fifth. It excepts to the refusal to find the fourth-proposed conclusion of law of the respondent.

123 Sixth. It excepts to the refusal to find the fifth-proposed conclusion of law of the respondent.

Seventh. It excepts to the refusal to find the sixth-proposed conclusion of law of the respondent.

Eighth. It excepts to the refusal to find the seventh-proposed conclusion of law of the respondent.

Ninth. It excepts to the refusal to find the eighth-proposed conclusion of law of the respondent.

That a final decree was made by the court affirming the decree of the district court in favor of the libellant herein for the sum of $35,141.40, with interest on $29,517.64, the principal, from August 8th, 1883, to date of decree, amounting to $1,810.42, and costs in the district court, taxed at the sum of $201.08, and costs in this court, taxed at $93.25, amounting in all to the sum of $37,246.15.

And inasmuch as the said exceptions do not appear by the record of the decree of said court, the counsel for said respondent has prepared and caused this bill of exceptions to be settled as a record thereof, according to the form of the statute in such cases
124 made and provided and the practice of the court, and to be signed and filed.

SAM'L BLATCHFORD. [L. S.]

And in order that said exceptions may properly appear in the record of said circuit court, the proctors of said claimants have prepared and caused this bill of exceptions, upon due notice to the proctors for the libellants, to be settled as the record thereof, according to the form and practice of this court, and to be signed and filed.

SAM'L BLATCHFORD. [L. S.]

Endorsed: Bill of exceptions. Filed September 2, 1884.

125 At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second circuit, held at the United States court-rooms, in the city of Brooklyn, on

the sixteenth day of August, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Samuel Blatchford, circuit justice.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent.

This case having been heard on the pleadings, testimony, and proofs, and having been submitted with arguments and briefs by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and de-
126 creed by the court that The Insurance Company of North America, the libellant herein, recover from The Liverpool and Great Western Steam Company, (Limited), respondent herein, the sum of thirty-five thousand one hundred and forty-one $\frac{40}{100}$ ($35,141.40) dollars, the amount found due to the libellant by the commissioner to whom reference was had to ascertain and report the damages of the libellant, with interest on twenty-nine thousand five hundred and seventeen $\frac{64}{100}$ ($29,517.64) dollars, the principal of said damages, from the 8th day of August, 1883, the date of the report of said commissioner, to the date of this decree, amounting to the further sum of one thousand eight hundred and ten $\frac{42}{100}$ ($1,810.42) dollars, and its costs in the district court as taxed at the sum of two hundred and one $\frac{8}{100}$ (201.08) dollars, and its costs in this court taxed at the sum of ninety-three $\frac{25}{100}$ dollars, amounting in all to the sum of thirty-seven thousand two hundred and
127 forty-six $\frac{15}{100}$ ($37,246.15) dollars; and it is further ordered, adjudged, and decreed that a summary judgment be, and the same hereby is, entered in favor of The Insurance Company of North America against The Liverpool and Great Western Steam Company (Limited) for the said sum of thirty-seven thousand two hundred and forty-six $\frac{15}{100}$ ($37,246.15) dollars; and it is further

Ordered, adjudged, and decreed that unless this decree be satisfied, or an appeal be taken and security be given within the time provided by law and the rules and practice of this court, then that the libellant have execution hereon against the Liverpool and Great Western Steam Company (Limited) to satisfy this decree, and that the clerk of this court recall to the registry of this court the sum of forty-three thousand and sixty-five $\frac{00}{100}$ ($43,065.00) dollars, with all accumulation of interest thereon, heretofore taken by him
128 from the registry of this court, where it was held to the credit of this action, and under an order of this court, entered the 14th day of May, 1884, by him deposited in the Central Trust Company of New York, and when so recalled to the registry of this court be by him distributed in satisfaction of this decree and the fees of the officers of this court, and this decree is to be entered as of the date in the caption thereof.

SAM'L BLATCHFORD.

Endorsed: Final decree. Filed and entered as of the 16th day of August, 1884. Filed August 21, 1884.

129 Circuit Court of the United States, Eastern District of New York.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant and Appellee,
vs.
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent & Appellant.

Please take notice that the respondent in the above-entitled action appeals to the Supreme Court of the United States from the decree of the circuit court of the United States for the eastern district of New York, entered in said action on the 21st day of August, 1884; that the decree of the district court be affirmed, and that the libellant recover from the respondent, as damages and costs, the sum of thirty-seven thousand two hundred and forty-six and $\frac{15}{100}$ dollars ($37,246.15), and from such and every part of said decree.

Dated New York, August 30, 1884.

BEEBE, WILCOX & HOBBS,
Proctors for Respondents and App'l't.

To B. Lincoln Benedict, Esq., clerk of the U. S. circuit court for the eastern district of New York; Messrs. Butler, Stillman & Hubbard, proctors for libellant & appellee, 111 Broadway, New York.

Filed August 30th, 1884.

130 At a stated term of the circuit court of the United States for the eastern district of New York, held in the United States. court-rooms, in the city of Brooklyn, on the 1st day of September, 1884

Present: The Honorable Samuel Blatchford, circuit justice.

THE PHENIX INSURANCE COMPANY, Libellant & Appellee,
ag'st
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent & Appellant.

On reading and filing the annexed petition of appeal of the respondent and appellant in the above-entitled action, and a bond in due form and in the sum of two hundred and fifty dollars
131 ($250), with sufficient sureties, conditioned that the appellant shall duly prosecute its said appeal, having been given, and it appearing that the sum of nineteen thousand three hundred and five dollars ($19,305) is now on deposit in the Central Trust Company of New York to the credit of this action, in place and stead of any further bonds on appeal:

Ordered that the said appeal be, and the same is hereby, allowed to the Supreme Court of the United States, and that the said bond be accepted, and that execution on the decree herein be stayed, pending the hearing of this appeal.

SAM'L BLATCHFORD.

Endorsed: Order allowing appeal. Filed September 2, 1884.

132 Circuit Court of the United States, Eastern District of New York.

THE PHENIX INSURANCE COMPANY, Libellant & Appellee,
ag'st
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent & Appellant.

To the honorable the Supreme Court of the United States:

The appeal of the Liverpool and Great Western Steam Company (Limited), respondent & appellant herein, respectfully shows:

That on the 27th day of January, 1881, the libellant and appellee above named exhibited its libel in an action *in personam*, with clause of foreign attachment, in the district court of the United States for the eastern district of New York, against the respondent herein, claiming damages in the sum of $15,000 for the reasons
133 set forth in the said libel, and praying, among other things, that the goods and chattels of the respondent then within the jurisdiction of the said court be attached for the amount sued for.

That process thereupon duly issued out of said court and property of the respondent was attached, to wit, the steamship "Wisconsin;" whereupon the respondent appeared in the action and filed a stipulation for value of the same in the sum of $20,000.

That thereafter, and on or about the 22d day of March, 1881, the respondent filed its answer to the said libel in the said district court, denying all liability for the damages claimed, and praying that the said libel be dismissed, with costs to the respondents.

That on and from the 8th to the 14th days of November, 1882, the said cause being at issue, came on to be heard before the Hon. Charles L. Benedict, judge of the said district court, upon the pleadings, testimony, and proofs advanced by the respective parties and the depositions and proofs taken in the said cause by them,
134 and the said judge, *having* advised thereon, did, on the 19th day of February, 1884, make a final decree in the said cause whereby it was, among other things, ordered, adjudged, and decreed that the libellant recover from the respondent the sum of $16,063.34, its damages and costs.

That on the 2d day of May, 1884, by consent of the parties interested, and in conformity with order duly entered, the respondent deposited in the registry of the said district court the sum of $19,500 as security for the stipulation for costs and value theretofore filed by it, and the stipulators were then discharged from all liability thereunder; that it was ordered that the said deposit should be at all times and places subject to the order or decree of said court, or the appellate court in the action, and it was further ordered that on making said deposit the respondent should be released from giving any bond upon appeal from any judgment or decree entered in the said action.

That thereafter your petitioner, the appellant, duly appealed to the circuit court of the United States for the eastern district of New

York, in the second circuit, and the said cause was thereby
135 removed to the said circuit court.

That the said money so deposited in the registry of the district court was subsequently transferred to the said circuit court, less one per cent., which the clerk of the said district court claimed and withheld as a fee, and the same, by consent of the parties in interest and order duly made thereon May 14th, 1884, — deposited by the clerk of said circuit court in the Central Trust Company of New York, there to remain subject to the further order or decree of said court in the action, or of any appellate court; that the same, viz., nineteen thousand three hundred and five dollars ($19,305), remains so deposited and in place and stead of any security to be given by the respondent and appellant on this appeal.

That thereafter the said action was tried anew before the Honorable Samuel Blatchford, associate justice of the Supreme Court of the United States, sitting as circuit justice in the said circuit, on the pleadings, depositions, testimony, and proofs taken in the said district court, and certain proposed findings of fact and con-
136 clusions of law submitted by the respective parties, and such proceedings were had in the said circuit court that afterwards the said justice filed certain findings of fact and conclusions of law, together with an opinion in writing.

That thereafter the respondent moved the said court to allow it to amend its pleadings in certain particulars described in said motion and for leave to introduce evidence under said amendments, which said motion was denied.

That thereafter the respondent filed certain exceptions to the said conclusions of law, and that afterwards the said justice granted to the respondent a certain bill of exceptions, which said bill was duly filed in the office of the clerk of the circuit court of the United States for the said district.

That on the 16th day of August, 1884, the said circuit court made a final decree in said cause, which was entered in the said court on the 21st day of August, 1884, as of the date of the said 16th day of August, 1884, whereby it was ordered, adjudged, and decreed that the said decree of the district court be affirmed in all things, and that the libellant, The Phenix Insurance Company, recover
137 from the respondent the sum of $15,432.48, the amount found to be due to the libellant by the said district court, with interest thereon amounting to $811.94, and the sum of $211.68, its costs in the said district court, as taxed, and the sum of $86.25, its costs in the said circuit court, as taxed, amounting in all to the sum of sixteen thousand five hundred and forty-two and $\frac{35}{100}$ dollars ($16.542.35).

That this respondent and appellant is advised and insists that the said decree is erroneous, inasmuch as the said decree of the district court should not have been affirmed, but should have been reversed, and that there should have been a decree made in favor of this respondent and appellant for its costs in the district and circuit courts, and this respondent and appellant, for these and other reasons, feeling aggrieved by the said decree, hereby appeals from the

whole of said decree of the said circuit court to the Supreme Court of the United States, and respectfully prays that the decree of the said circuit court and the libel, answer, pleadings, the findings of fact and conclusions of law, made and filed by the said justice, the
138 exceptions thereto, and the bill of exceptions granted by the said justice, the respondent's motion for leave to amend its pleadings and for leave to introduce evidence under said amendments, the order denying said motion, and all the proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause, and that the said decree of the said circuit court and every part thereof may be reversed, and that a mandate may be issued to the said circuit court directing that the said decree be reversed, and that a decree may be entered in favor of the respondent and appellant for its costs, or that such other decree be made as to the said Supreme Court shall seem fit.

Dated New York, August 30th, 1884.

BEEBE, WILCOX & HOBBS,
Proctors for Respondent and Appellant.

Endorsed: Petition of appeal. Filed September 2d, 1884.

139 Circuit Court of the United States, Eastern District of New York.

THE PHENIX INSURANCE COMPANY, Libellant & Appellee,
ag'st
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent & Appellant.

Know all men by these presents that we, The Liverpool and Great Western Steam Company (Limited), William H. Guion, Jr., and Andrew M. Underhill, are held and firmly bound unto the above-named appellee, The Phenix Insurance Company, in the sum of two hundred and fifty dollars, to be paid to said appellee; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty-ninth day of
140 August, in the year of our Lord one thousand one hundred and eighty-four.

Whereas a final decree has been rendered by the circuit court of the United States for the eastern district of New York in the above entitled action in favor of the libellant and appellee above named and against the respondent and appellant for the sum of sixteeen thousand five hundred and forty-two and $\frac{35}{100}$ dollars ($16,542.35); and

Whereas the said decree was filed in the office of the clerk of the said circuit court of the United States for the eastern district of New York on the 21st day of August, 1884; and

Whereas the respondent above named, The Liverpool and Great Western Steam Company (Limited), feeling aggrieved thereby, has

appealed from the said final decree of the said circuit court to the Supreme Court of the United States; and

Whereas the said respondent and appellant has caused to be deposited in the Central Trust Company of New York the sum of nineteen thousand three hundred and five dollars ($19,305) to the credit of the above-entitled action, as security for any dam-
141 ages finally decreed against it, with costs in the said district and circuit courts:

Now, therefore, the condition of this obligation is such that if the above-named respondent shall prosecute its said appeal with effect and answer all costs on the said appeal if they fail to make the same good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE LIVERPOOL & GREAT WESTERN STEAM CO. (LIMITED),
By WM. H. GUION, JR., *Agent.* [SEAL.]
WM. H. GUION, JR. [SEAL.]
A. M. UNDERHILL. [SEAL.]

Signed, sealed, delivered, taken, and acknowledged in my presence this 29th day of August, 1884.

CORNELIUS D. GOULD,
Notary Public, New York Co.

142 UNITED STATES OF AMERICA, *Eastern District of New York,* } *ss:*

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to one hundred and forty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Insurance Company of North America, libellant, & appellee, *vs.* The Liverpool and Great Western Steam Company (Limited), respondent and appellant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 23d day of September, A. D. 1884, and of the Independence of the United States the one hundred and ninth.

[Seal of the Circuit Court, Eastern District of New York.]

B. LINCOLN BENEDICT, *Clerk.*

143 By the Honorable Samuel Blatchford, justice of the circuit court of the United States for the eastern district of New York, in the second circuit, to the Insurance Company of North America:

Whereas the respondent, The Liverpool and Great Western Steam Company (Limited), has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court

of the United States for the eastern district of New York, in the second circuit, made in favor of you, the said Insurance Company of North America, and against the said respondent, stating that the said decree is erroneous and praying that the same be reversed, and has deposited and filed the security required by law:

Now, therefore, you are hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the second Monday of October next, to do and receive what may appertain to *the* justice to be done in the premises.

Given under my hand and the seal of this court, at the city of Broklyn, in the second circuit, the first day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

SAM'L BLATCHFORD.

144 [Endorsed:] U. S. circuit court, eastern district of New York. The Liverpool and Great Western Steam Company (Limited), appellant, ag'st The Insurance Company of North America, appellee. Citation. Beebe, Wilcox & Hobbs, proctors for appellant, No. 69 Wall street, New York.

Due service of a copy of the within is hereby admitted.
Dated New York, Sept. 2d, 1884.

BUTLER, STILLMAN & HUBBARD,
Proctors for Libellant.

Endorsed on cover: E. New York C. C. U. S. No. 333. The Liverpool & Great Western Steam Company (Limited), appellant, *vs.* The Insurance Company of North America. Filed 2d October, 1884.

WRIT OF CERTIORARI AND RETURN.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

~~No. 332.~~ ~~56~~ 5

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED), APPELLANT,

vs.

THE PHENIX INSURANCE COMPANY.

AND

~~No. 333.~~ ~~57~~ 6

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED), APPELLANT,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED MARCH 8, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 332.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED), APPELLANT,

vs.

THE PHENIX INSURANCE COMPANY.

AND

No. 333.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED), APPELLANT,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, APRIL 26, 1887.

a THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the eastern district of New York, Greeting:

Whereas in certain suits in said circuit court between The Liverpool and Great Western Steam Company (Limited), respondent and appellant, and The Phenix Insurance Company, libellant and appellee, and The Liverpool and Great Western Steam Company (Limited), respondent and appellant, and The Insurance Company of North America, libellant and appellee, which suits were removed to the Supreme Court of the United States by virtue of appeals agreeably to the act of Congress in such case made and provided, a diminution of the records and proceedings of said causes has been suggested, to wit:

b "1. That the affidavit of F. A. Wilcox dated the 6th day of August, 1884, and the proposed amended answer thereto annexed is omitted from the transcript;

2. That the opinion of Mr. Justice Blatchford denying the relief asked for in said affidavit is omitted from the transcript;

3. That the order dated the 25th day of August, 1884, denying the relief asked for in said affidavit is omitted from the transcript:"

You, therefore, are hereby commanded that, searching the records and proceedings in said causes, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Morrison R. Waite, Chief Justice
c of the Supreme Court of the United States, the 3d day of February, A. D. 1886.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

d [Endorsed:] U. S. Supreme Court. The Liverpool & Great Western Steam Company (Limited), app'l't, *v.* The Phenix Insurance Company. The Liverpool & Great West'n Steam Company (Limited) *v.* The Insurance Company of North America. Writ of certiorari for diminution of record. Received February 8, 1886.

1 UNITED STATES OF AMERICA, }
Eastern District of New York, } *ss.:*

Circuit Court of the United States for the Eastern District of New York.

THE ULSTER MARINE INSURANCE COMPANY (Limited), Libellant,
against
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent.

THE INSURANCE COMPANY OF NORTH AMERICA
against
THE SAME.

THE PHENIX INSURANCE COMPANY *against* THE SAME.

2 Franklin A. Wilcox, being duly sworn, says that he is one of the proctors for the respondents in the above-entitled actions; that the said actions are suits *in personam* against the said respondent to recover certain large sums of money claimed to be due them by reason of their having been subrogated to the rights of shippers of portions of the cargo of the steamship "Montana," then owned by the respondent, which was stranded on the coast of Wales, near the port of Liverpool, on the 13th day of March, 1880, and the said portions of cargo lost or damaged.

That the said actions were tried in the district court for this district and decrees entered therein in favor of the libellants for amounts aggregating $51,849.60; that appeals were duly taken therefrom to the circuit court for this said district and argued before the Hon. Samuel Blatchford, associate justice of the Supreme Court of the United States, justice of the said court, who, on the first day of August, 1884, rendered a decision therein affirming the said decrees in the actions of the Insurance Company of North America and the Phenix Insurance Company, but no decrees have been entered.

3 That the libellant, The Ulster Marine Insurance Company, was at all the times mentioned in the said libel and ever since has been and still is a corporation duly organized and existing under and by virtue of the laws of Great Britain and Ireland.

That the libellant, the Insurance Company of North America, was at all the times mentioned in the said libel and ever since has been and still is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania.

That the libellant, the Phenix Insurance Company, was at all the times mentioned in the said libel and ever since has been and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York.

That the respondent was at all the times mentioned in the said libel and ever since has been and still is a corporation duly organized and existing under and by virtue of the laws of Great Britain and Ireland.

That the said portions of cargo lost or damaged were shipped on the said steamship from the port of New York to be delivered in Liverpool, England, under contracts made and entered into in New York city, Nashville, Tennessee, and Buffalo, New York.

4 That the respondent contends that the question of its liability is governed by and should be decided under the law of Great Britain; that by the said law the respondent would be exempt from liability to the libellants in these actions.

That no proof of the said law has been made, it having been understood by the deponent that the same was recognized by the libellants and formal proof thereof would not be required by them; that the question was argued and reference and allusion made to the books of statutes and reports of decisions of Great Britain without objections & on the part of libellants in the district courts; that the libellants, in their brief of argument before this court (6th par. of 2nd heading, p-. 28 & 29), expressly admit that such is the law of Great Britain in the following words, viz: "And in the English courts, which uphold to the fullest extent the carrier's right to limit his liability and which seem to recognize some special reason in favor of the privilege of exemption as applicable to the owners of vessels or steamships, as contradistinguished from land carriers;" that, nevertheless, the libellants made the point in this court, and for the first time, that the proof had not been made (brief of argument, par. 2, 2nd heading, p-. 20 & 21); that the court in its

5 said decision has recognized this point and held the same well taken.

That great injustice may result to the respondent from this technicality; and it therefore prays that it may be permitted to amend its answers in the said actions so that they will aver the existence of the said law and its applicability to these actions.

And the deponent further says that grave questions and doubts exist as to the power of the courts of the United States to decide the questions involved in these actions without a reference to the said law, and that the issues to decide this question, under the view taken by this court, are not properly raised by the answers of the respondent, it having appeared unreservedly and admitted therein the jurisdiction of the district court; that jurisdiction was obtained by the district court in these cases by process *in personam* with clause of foreign attachment, under which property of the respondent was seized, and the respondent appeared in consequence thereof; that it was not intended by such appearance or by the admission of the jurisdiction of the court to waive its right to rely upon the said law as a ground of defence.

6 It therefore prays that it also be permitted to amend its answers so that they will qualify the appearance and admission of jurisdiction in this particular.

That the proposed amended answers are hereto annexed.

And the respondent further prays that it may be permitted to prove in this court the said law of Great Britain, and for such other relief as may be just.

F. A. WILCOX.

Sworn to before me this 6th day of August, 1884.
[SEAL.] JAMES MACKLIN,
Notary Public, N. Y. Co.

7 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The amended answer of The Liverpool and Great Western Steam Company (Limited) to the libel and complaint of The Phenix Insurance Company against the said The Liverpool and Great Western Steam Company (Limited) in a cause of action, as alleged, arising from breach of contract, &c., alleges as follows:

First. That the said The Liverpool and Great Western Steam Company (Limited) has duly appeared herein, but without prejudice to its rights to rely upon the hereinafter-mentioned law of Great Britain as a ground of defense to the said libel.

Second. The respondent has no knowledge as to the allegations contained in the first article of the libel, and therefore leaves the libellants to make such proof thereof as it may be advised, except that it admits that the respondent was at the times in said first article of the libel alleged a corporation, duly organized and existing under and by virtue of the laws of Great Britain and Ireland, for the purpose of owning and navigating steamers, and for the purpose of carrying passengers and cargo, not, however, admitting,

8 but expressly denying, that the respondent was a common carrier.

Third. The respondent denies each and every allegation contained in the second article of the libel, except as hereinafter admitted.

Fourth. The respondent denies each and every allegation contained in the third article of the libel, except as hereinafter admitted.

Fifth. The respondent denies each and every allegation contained in the fourth article of the libel, except as hereinafter admitted.

Sixth. It denies each and every allegation contained in the fifth article of the libel, except as hereinafter admitted.

Seventh. It denies each and every allegation contained in the sixth article of the libel.

Eighth. The respondent has no knowledge as to the allegations contained in the seventh article of the libel and, therefore, leaves the libellant to make such proof thereof as it may be advised.

Ninth. The respondent admits, as alleged in the eighth article of the libel, that it is a foreign corporation, but denies that it had at the times therein alleged, or now has, any officers in this district, but admits the remaining allegations of the said eighth article of the libel.

9 Tenth. The respondent denies each and every allegation contained in the ninth article of the libel, except as herein admitted, and except that it admits the jurisdiction of this honorable court, without prejudice, however, to its right to rely upon the hereinafter-mentioned law of Great Britain as a ground of defence to the said libel.

Eleventh. The respondent, further answering herein, alleges that since the year 1866 it has been the owner of certain steamers plying

between the port of New York and the port of Liverpool, and that the steamer "Montana" was a steamer owned and navigated by it; that the home port of the said steamer was at Liverpool aforesaid, where she was registered, and where the respondent carried on its business, having an agency, however, in the port of New York; that on the second day of March, 1880, said steamer left the port of New York with a cargo of merchandise and a number of passengers, to be transported thereon to the port of Liverpool; that among such cargo was the cargo, or a portion thereof, described in the third article of the libel, and, so far as respondents have information, the said goods and merchandise were received on board the
10 said steamer in apparent external good order and condition; that the said goods and merchandise were delivered by the shippers thereof and received by the respondent under certain bills of lading, copies of which bills of lading are annexed to answer, marked Schedules, and which said bills of lading were executed and delivered by the respondent to, and received by, the said shippers, and to which said bills of lading the respondent craves leave to refer and to make the same a part of this its amended answer, as constituting the contract between the shippers of the said goods on the one hand and the respondent on the other; and the said respondent respectfully alleges that it assumed no greater risks and responsibilities than are expressed in said bills of lading in respect to the said goods and merchandise, or to any one having any interest therein.

Twelfth. The respondent alleges that on the voyage of said steamer from New York to Liverpool the said goods and merchandise, or a portion thereof, became lost or damaged by perils of the sea and causes from which the said respondent was exempt by law,
11 and the said bills of lading or contract of affreightment under which said goods had, as aforesaid, been delivered and received by said the respondent.

Thirteenth. The respondent, further answering, alleges that at and previous to the time of the accident mentioned in the libel the said steamer "Montana" was staunch and strong and well and sufficiently equipped and manned and under the command of an experienced and duly licensed master; that the said master was on the bridge and a double lookout was properly placed and stationed, and that there was an officer of the deck, all of whom were carefully attending to their respective duties; that the said steamer left Queenstown on March 12th, 1880, at about 2.15 p. m., on her voyage to Liverpool from New York; that the course of the steamer from Tuska was, as indicated by the steamer's standard compass, corrected, north 42 degrees E., as hereinafter mentioned; that the steamer reached the vicinity of Tuska about eight o'clock of the same evening, and it was expected to pass the South Stack light, situated on the Welch coast, about 2 o'clock in the morning; the tide was about high in the channel about midnight, so that from Tuska to the South Stack light the steamer would have about four
12 hours' flood and two hours' ebb tide, and consequently the effect of the tide was such as to set the vessel more toward the Irish coast than the Welch coast, which, as the steamer passed

abreast of the South Arklow light, situated on the Irish coast, about 9.45 p. m., was found to be the case.

That the weather was clear on the water and lights visible; that the South Stack light, situated on the coast of Wales, was reported about 1.20 o'clock a. m. bearing about southeast by east and distant, as near as could be judged, about fifteen miles; that the light was then carefully observed by the said master and the second officer, who were on the bridge at the time, through their glasses, and they concluded that the position of the steamer was then in mid-channel, and they were in full range of that light, which appeared to be just dipping. All this indicated that the flood-tide had set the steamer well over toward the Irish coast. Up to this time the night was clear and the lights of passing vessels could be seen two or three miles. When the South Stack light was about a point abaft the beam, and the master and second officer still calculating that the steamer was about fifteen miles away from it, that light disappeared, as judged, below the horizon, and the course of the steamer was altered to due east, so as to come within the
13 range of the Skerries light, situated on the Welch coast, as it was thought the steamer was so far out that it might not be seen. After running on such east course five minutes a gun was heard on the starboard quarter; that the course of the vessel was immediately altered back to her original course, northeast ¾ north, and the engines slowed, as it was then for the first time thought there might be a fog on the land, although it could not be seen. After running on the said course for about half an hour, and expecting every moment to see the Skerries light on the starboard side, about 2.45 a. m. something, which appeared to be a fog-bank, was observed on the starboard bow, and the engines were immediately order- full speed astern, which order was promptly obeyed, but before the engines could be stopped the steamer went ashore in Church Bay, on the coast of Wales, the steamer having very little headway at the time; that in consequence of such stranding said cargo mentioned in the libel, or a portion thereof, was either damaged or lost.

Fourteenth. And the respondent respectfully alleges in respect to the premises that in so far as the employment of a skilled and licensed master and officers of said vessel, and in respect to the
14 careful observation by them of the elements and everything which would, in the exercise of ordinary human skill, enable them to determine and judge the position of the vessel and to navigate her accordingly, and in respect to the seaworthiness and outfit of said steamer, and in respect to everything within the reasonable limits of skill and foresight, it had fully complied with all the requirements of its contract of affreightment regarding the goods and merchandise mentioned in the libel and with all the requirements of law in such cases.

Fifteenth. The respondent, further answering, says that the said steamer at the time of the said accident was sailing under the flag of Great Britain.

Sixteenth. That the law of Great Britain at all the times mentioned in the said libel enabled ship-owners by express contract to

exempt themselves from liability for the consequences of any damages or injury to goods transported on their ships, howsoever the same might have been caused, whether arising from negligence, default, or error in judgment of the master, mariners, engineers, or other of the crew or otherwise.

15 Seventeenth. That, by the contracts for the transportation or carriage of the goods claimed to have been lost or damaged by the libellant, the respondent had expressly and in conformity with the said law exempted itself from any liability whatsoever.

Eighteenth. That the said contracts were subject to and governed by this said law.

Nineteenth. That all and singular the premises are true.

Wherefore the respondent prays that the libel be dismissed with costs.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William H. Guion, Jr., being duly sworn, says that he has read the foregoing answer and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true.

16 Deponent further says that the reason this verification is made by him and not by the respondent is that it is a foreign corporation, and deponent is the agent thereof.

WM. H. GUION, JR.

Sworn to before me this 7th day of August, 1884.

[SEAL.] ANDREW DUTCHER,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

17 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The amended answer of the Liverpool and Great Western Steam Company (Limited) to the libel and complaint of the Insurance Company of North America against the said The Liverpool and Great Western Steam Company (Limited) in a cause of action, as alleged, arising from breach of contract, &c., alleges as follows:

First. That the said The Liverpool and Great Western Steam Company (Limited) have duly appeared herein, but without prejudice to its rights, to rely upon the hereinafter mentioned law of Great Britain as a ground of defence to the said libel.

Second. The respondents have no knowledge as to the allegations contained in the first article of the libel, and therefore leave the libellants to make such proof thereof as they may be advised, except that they admit that the respondents were at the times in the said first article of the libel alleged a corporation duly organized and existing under and by virtue of the laws of Great Britain and Ireland for the purpose of owning and navigating steamers,

18 and for the purpose of carrying passengers and cargo, not, however, admitting but expressly denying that the respondents were common carriers.

Third. The respondents deny each and every allegation contained in the second article of the libel, except as hereinafter admitted.

Fourth. The respondents deny each and every allegation contained in the third article of the libel, except as hereinafter admitted.

Fifth. The respondents deny each and every allegation contained in the fourth article of the libel, except as hereinafter admitted.

Sixth. They deny each and every allegation contained in the fifth article of the libel, except as hereinafter admitted.

Seventh. They deny each and every allegation contained in the sixth article of the libel.

Eight. The respondents have no knowledge as to the allegations contained in the seventh article of the libel, and therefore leave the libellants to make such proof thereof as they may be advised.

Ninth. The respondents admit, as alleged in the eighth article of the libel, that they are a foreign corporation, but deny that
19 they had at the times therein alleged or now have any officers in this district, but admit the remaining allegation of the said eighth article of the libel.

Tenth. The respondents deny each and every allegation contained in the ninth article of the libel, except as herein admitted, and except that it admits the jurisdiction of this honorable court, without prejudice, however, to its right to rely upon the hereinafter mentioned law of Great Britain as a ground of defense to the said libel.

Eleventh. The respondents, further answering herein, allege that since the year 1866 they have been the owners of certain steamers plying between the port of New York and the port of Liverpool, and that the steamer "Montana" was a steamer owned and navigated by them; that the home port of the said steamer was at Liverpool aforesaid, where she was registered and where the respondents carried on their business, having an agency, however, in the port of New York.

That on the 2d day of March, 1880, said steamer left the port of New York with a cargo of merchandise and a number of passengers to be transported thereon to the port of Liverpool.

20 That among such cargo was the cargo, or a portion thereof, described in the third article of the libel, and, so far as respondents have information, the said goods and merchandise were received on board of said steamer in apparent external good order and condition.

That the said goods and merchandise were delivered by the shippers thereof and received by the respondents under certain bills of lading, copies of which bills of lading are annexed to answer, marked Schedules A, B, C, D, and which said bills of lading were executed and delivered by the respondents to and received by the said shippers, and to which said several bills of lading the respondents crave leave to refer, and to make the same a part of this their amended

answer, as constituting the contract between the shippers of said goods, on the one hand, and the respondents, on the other, and the said respondents respectfully allege that they assumed no greater risks or responsibilities than are expressed in the said bills of lading in respect of the said goods and merchandise or to any one having any interest therein.

Twelfth. The respondents allege that on the voyage of said steamer from New York to Liverpool the said goods and merchandise,
21 or a portion thereof, became lost or damaged by perils of the sea and causes from which the said respondents were exempt by law and the terms of the said bills of lading, or contract of affreightment under which said goods had as aforesaid been delivered and received by the said respondents.

Thirteenth. The respondents, further answering, allege at and previous to the time of the accident mentioned in the libel the said steamer "Montana" was staunch and strong, and well and sufficiently equipped and manned and under the command of an experienced and duly licensed master; that the said master was on the bridge and a double lookout was properly placed and stationed; that there was an officer of the deck; all of whom were attending to their respective duties.

That the said steamer left Queenstown on March 12th, 1880, and about 2.15 p. m., on her voyage to Liverpool from New York; that the course of the steamer from Tuska was, as indicated by the steamer's standard compass corrected, north 42 degrees east, except as hereinafter mentioned; that the steamer reached the vicinity of Tuska about eight o'clock of the same evening, and it was expected to pass the South Stack light, situated on the Welsh
22 coast, about 2 o'clock the following morning. The tide was about high in the channel about midnight, so that from Tuska to the South Stack light the steamer would have about four hours' flood and two hours' ebb tide, and consequently the effect of the tide was such as to set the vessel more toward the Irish coast than the Welsh coast, which, as the steamer passed abreast of the South Arklow light, situated on the Irish coast, at about 9.45 p. m., was found to be the case.

That the weather was at all times clear on the water, and lights visible; that the South Stack light, situated on the coast of Wales, was reported about 1.20 a. m. bearing about southeast by east and distant, as near as could be judged, about fifteen miles. That light was then carefully observed by the said master and the second officer, who were on the bridge at the time, through their glasses, and they concluded that the position of the steamer was then in mid-channel, and they were in full range of that light, which appeared to be just dipping. All this indicated that the flood tide had set the steamer well over toward the Irish coast. Up to this time the night was clear, and the lights of passing vessels could be seen
23 two or three miles. When the South Stack light was about a point abaft the beam, and the master and second officer still calculating that the steamer was about fifteen miles from it, that light disappeared, as judged, below the horison, and the course of

the steamer was altered to due east, so as to come within the range of the Skerries light, situated on the Welsh coast, as it was thought the steamer was so far out that it might not be seen. After running on such east course five minutes a gun was heard on the starboard quarter; that the course of the steamer was immediately altered back to her original course, northeast three-quarters north, and the engines slowed, as it was then for the first — thought there might be a fog on the land, although it could not be seen. After running on the said course for about half an hour, and expecting every moment to see the Skerries light on the starboard side, about 2.45 o'clock a. m. something, which appeared to be a fog-bank, was observed on the starboard bow, and the engines were immediately ordered full speed astern, which order was promptly obeyed, but before the engines could be stopped the steamer went ashore in
24 Church Bay, on the coast of Wales, the steamer having very little headway at that time.

That in consequence of such stranding the said cargo mentioned in the libel, or a portion thereof, was either damaged or lost.

Fourteenth. And the respondents respectfully allege in respect to the premises that in so far as the employment of a skilled and licensed master and officers of said vessel, and in respect to the careful observation by them of the elements and everything which would, in the exercise of ordinary human skill, enable them to determine and judge the position of the vessel and to navigate her accordingly, and in respect to the seaworthiness and outfit of said steamer, and in respect of everything within the reasonable limits of skill and foresight, they have fully complied with all the requirements of their contract of affreightment regarding the goods and merchandise mentioned in the libel, and with all the requirements of law in such cases.

Fifteenth. The respondents, further answering, say that the said steamer at the time of the said accident was sailing under the flag of Great Britain.

25 Sixteenth. That the law of Great Britain at all times mentioned in the said libel enabled ship-owners to exempt themselves from liability for the consequences of any damages or injury to goods transported or carried on their ships, howsoever the same might have been caused, whether arising from negligence, default, or error in judgment of the master, mariners, engineers, or other of the crew or otherwise.

Seventeenth. That, by the contracts for the transportation or carriage of the goods claimed to have been lost or damaged by the libellant, the respondent had expressly and in conformity with the said law, exempted itself from any liability whatsoever.

Eighteenth. That the said contracts were subject to and governed by this said law.

Nineteenth. That all and singular the premises are true.

Wherefore the respondent prays that the libel be dismissed with costs.

26 SOUTHERN DISTRICT OF NEW YORK, *ss:*

William H. Guion, Jr., being duly sworn, says that he has read the foregoing answer and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by him and not by the respondent is that it is a foreign corporation and deponent is the agent thereof.

WM. H. GUION, JR.

Sworn to before me this 7th day of August, 1884.

[L. S.] ANDREW DUTCHER,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

Endorsed: Affidavit & notice of motion for leave to amend answers, &c., and proposed amended answers. Filed August 21st, 1884.

27 Circuit Court of the United States for the Eastern District of New York.

THE INSURANCE COMPANY OF NORTH AMERICA
against
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited).

THE PHENIX INSURANCE COMPANY *against* THE SAME.

BLATCHFORD, *J.:*

In the decision rendered by this court in these cases it was said: "It is urged, however, that the contract here was to be chiefly performed on board of a British vessel, and to be finally completed in Great Britain, and the damage occurred in Great Britain, and that the law of Great Britain, which is asserted to be different from the law here, is applicable to the case. As to this suggestion it is sufficient to say that the answers expressly admit the

28 jurisdiction of the district court asserted in the libels, and that it is not set up in the answer that the law of Great Britain or any other law than that of the forum is applicable to the case, nor is the law of Great Britain, if it be different, proved as a fact. The case must be decided, according to the law of the Federal courts, as a question of general commercial law. Aside from this, it may be said that there was nothing in these contracts of affreightment to indicate any contracting in view of any other law than the recognized law of such forum in the United States as should have cognizance of suits on the contracts." In the decision rendered by the district judge he remarked: "It is said in behalf of the defendants that their liability upon these bills of lading must be determined by the laws of England. But the undisputed facts show that there is no ground for such a contention."

The respondent now moves in these cases " for leave to amend the answers herein in the particulars mentioned and shown in
29 the proposed amended answers hereto annexed, and for leave to prove the law of Great Britain as therein prayed, and for such other and further relief as may be just." The motion is made before decrees are signed.

The allegations of the original answers which are proposed to be amended are these:

" First. That the said The Liverpool and Great Western Steamship Company (Limited) has duly appeared herein. * * * Tenth. The respondent denies each and every allegation contained in the ninth article of the libel, except as herein admitted, and except that it admits the jurisdiction of this honorable court." The ninth article of the libel in each case was this: " Ninth. All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court."

The answers, if amended as proposed, are to contain the following allegations, the parts not found in the original answers being underscored: " First. That the said The Liverpool and Great Western Steamship Company (Limited) has duly appeared herein, *but*
30 *without prejudice to its right to rely upon the hereinafter-mentioned law of Great Britain, as a ground of defence to the said libel.* * * * Tenth. The respondent denies each and every allegation contained in the ninth article of the libel, except as herein admitted, and except that it admits the jurisdiction of this honorable court, *without prejudice, however, to its right to rely upon the hereinafter-mentioned law of Great Britain as a ground of defence to the said libel.* * * * *Fifteenth. The respondent, further answering, says that the said steamer, at the time of the said accident, was sailing under the flag of Great Britain. Sixteenth. That the law of Great Britain, at all the times mentioned in the said libel, enabled ship-owners, by express contract, to exempt themselves from liability for the consequences of any damages or injury to goods transported on their ships, howsoever the same might have been caused, whether arising from negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise. Seventeenth. That, by the contracts for the transportation or carriage of the goods claimed to have been lost or damaged by the libellants, the*
31 *respondent had expressly, and in conformity with the said law, exempted itself from any liability whatsoever. Eighteenth. That the said contracts were subject to and governed by this said law.*"

The affidavit of the proctor for the respondent, on which the motion is based, says: " That the respondent contends that the question of its liability is governed by, and should be decided under, the law of Great Britain; that, by the said law, the respondent would be exempt from liability to the libellants in these actions; that no proof of the said law has been made, it having been understood by the deponent that the same was recognized by the libellants, and formal proof thereof would not be required by them; that the question was argued and reference and allusion made to the books of statutes and reports of decisions of Great Britain, without objections on the part of libellants, in the district court; that the libellants, in

their brief of argument before this court, expressly admit that such is the law of Great Britain, in the following words, viz: "And in the English courts, which uphold to the fullest extent the carrier's right
32 to limit his liability, and which seem to recognize some special reason in favor of the privilege of exemption as applicable to the owners of vessels or steamships, as contradistinguished from land carriers; that, nevertheless, the libellants made the point in this court, and for the first time, that the proof had not been made; that the court in its said decision has recognized this point and held the same well taken; that great injustice may result to the respondent from this technicality, and it therefore prays that it may be permitted to amend its answers in the said actions so that they will aver the existence of the said law and its applicability to these actions; that grave questions and doubts exist as to the power of the courts of the United States to decide the questions involved in these actions without a reference to the said law; that the issues to decide this question under the view taken by this court are not properly raised by the answers of the respondent, it having appeared unreservedly and admitted therein the jurisdiction of the
33 district court; that jurisdiction was obtained by the district court in these cases by process *in personam*, with clause of foreign attachment, under which property of the respondent was seized, and the respondent appeared in consequence thereof; and that it was not intended by such appearance or by the admission of the jurisdiction of the court to waive its right to rely upon the said law as a ground of defense. It therefore prays that it also be permitted to amend its answers, so that they will qualify the appearance and admission of jurisdiction in this particular," and "that it may be permitted to prove in this court the said law of Great Britain, and for such other relief as may be just."

The libellants oppose this motion. Rule 24 of the rules in admiralty prescribed by the Supreme Court applies to and covers only amendments of informations and libels. Rule 51 of those rules applies only to amending a libel. By rule 46 the circuit court
34 has power in cases not provided for to regulate its practice in such manner as it shall deem most expedient for the due administration of justice in suits in admiralty. Rule 52 contemplates that there shall be a "prayer for an appeal" in the district court, and that such paper shall form a part of the record to be transmitted to the circuit court on appeal.

This court has promulgated rules in regard to appeals in admiralty, as follows: "Rule 3. Every appeal to the circuit court in a cause of admiralty and maritime jurisdiction shall be in writing, signed by the party or his proctor, and delivered to the clerk of the district court from the decree of which the appeal shall be made; and it shall be returned to the court with the necessary documents and proceedings within twenty days, and by the first day of the next term after the delivery thereof to the clerk, unless a longer time is allowed by the judge. Rule 4. The appeal shall briefly state the prayers or allegations of the parties to the suit in the district court, the proceedings in that court, and the decree,

35 with the time of rendering the same. It shall also state whether it is intended, on the appeal, to make new allegations, to pray different relief, or to seek a new decision on the facts, and the appellants shall be concluded in this behalf by the appeal filed." The final decrees of the district court in these cases were filed and entered February 19th, 1884. On the 29th of February, 1884, a notice of appeal by the respondent was filed in the district court in each case. On the 6th of May, 1884, a petition of appeal in each case was filed in the district court. The petition complies with rule 4 of this court, and says: "And on the said appeal it intends to have the said cause heard anew on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court." The petitions of appeal do not state that the appellants intend to make new allegations in this court on the appeals. They are, therefore, concluded in that behalf by the appeals filed.

36 The respondent, having stated in its answers that it had duly appeared in each suit, cannot be permitted now to state that it made a qualified appearance. It does not appear that it made a qualified appearance or other than an absolute appearance. The respondent, having admitted in its answers the jurisdiction of the district court, cannot be permitted to now change that admission to a qualified admission. The making of these allegations in the answers was not influenced by anything but the facts of the case as then before the respondent. There was no mistake or misapprehension of fact, and there is no suggestion that the respondent did not know then all it knows now in regard to the facts of the case. The allegations that the steamer was sailing under the British flag and that the contracts purported to exempt the respondent from liability and as to what the law of Great Britain was are allegations of facts known to the respondent when the answers were filed. The allegation that the contracts were subject to and governed by the law of Great Britain as an allegation of fact on law does not set up anything newly discovered; and, if it

37 is intended to set up a new defence beyond any set up before, it is such a new allegation as rule 4 of this court as to appeals was intended to cut off, unless the petition of appeal should state an intention to make new allegations in this court. That rule is a reasonable one and is calculated to promote the due administration of justice in suits in admiralty.

The motion is denied.

Butler, Stillman & Hubbard, for the libellants; F. A. Wilcox, for the respondent.

Endorsed: Decision August 21st, 1884. Filed August 21st, 1884.

38 At a stated term of the circuit court of the United States for the eastern district of New York, held on the 25th day of August, in the year of our Lord one thousand eight hundred and eighty-four.

Present: Honorable Samuel Blatchford, circuit justice.

THE INSURANCE COMPANY OF NORTH AMERICA, Libellant,
against
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent.

The respondent having moved upon the affidavit of Franklin A. Wilcox and upon all the proceedings heretofore had in this action for leave to amend its answer, and the said motion having been duly submitted upon the briefs of the respective parties, it is now, due deliberation having been had, and on motion of Butler, Stillman & Hubbard, proctors for the libellant—

Ordered, That the said motion be, and that the same hereby is, denied.

SAMUEL BLATCHFORD.

39 Endorsed: Order denying motion to amend answer. Filed and entered the 1st day of September, 1884.

40 At a stated term of the circuit court of the United States for the eastern district of New York, held on the 25th day of August, in the year of our Lord one thousand eight hundred and eighty-four.

Present: Honorable Samuel Blatchford, circuit justice.

THE PHENIX INSURANCE COMPANY, Libellant,
against
THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Respondent.

The respondent having moved upon the affidavit of Franklin A. Wilcox and upon all the proceedings heretofore had in this action for leave to amend its answer, and the said motion having been duly submitted upon the briefs of the respective parties, it is now, due deliberation having been had, and on motion of Butler, Stillman and Hubbard, proctors for the libellant—

Ordered, That the said motion be, and that the same hereby is, denied.

SAM'L BLATCHFORD.

41 Endorsed: Order denying motion to amend answer. Filed and entered the 1st day of September, 1884.

42 UNITED STATES OF AMERICA, } ss.:
Eastern District of New York, }

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to forty-one, inclusive, contain a true and complete transcript of, "1, the affidavit of F. A. Wilcox, dated the 6th day of August, 1884, and the proposed amended answers thereto annexed; 2, the opinion of Mr. Justice Blatchford, denying the relief asked for in said affidavit; 3, the orders, dated the 25th day of August, 1884, denying the relief asked for in said affidavit," in the suits of The

Insurance Co. of North America against The Liverpool and Great Western Steam Company (Limited) and The Phenix Insurance Co. against the same, as the same remain of record *of record* and on file in said office.

Herewith transmitted in accordance with the writ of certiorari for diminution of record issued from the Supreme Court of the United States February 3rd, 1886.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 6 day of March, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the said United States the one hundred & tenth.

[The Seal of the Circuit Court, Eastern District of New York.]

B. LINCOLN BENEDICT, *Clerk.*

[Endorsed:] U. S. Supreme Court. 1885, October term. Nos. 332, 333. The Liverpool & Great Western Steam Co., app't, *vs.* The Phenix Insurance Co. and The Insurance Comp'y of N. America. Writ of certiorari and return.

[Stamped:] Office Supreme Court U. S. Filed Mar. 8, 1886. James H. McKenney, clerk.

SUPREME COURT OF THE UNITED STATES.

On Appeal from the Circuit Court,

FOR THE EASTERN DISTRICT OF NEW YORK.

No. 56, October Term, 1887.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited),

Appellant,

versus

THE PHŒNIX INSURANCE COMPANY,

Appellee.

No. 57.

SAME,

Appellant,

versus

THE INSURANCE COMPANY OF NORTH AMERICA,

Appellee.

APPELLANT'S BRIEF.

BEEBE & WILCOX,

Proctors for Appellant,

69 WALL STREET,

New York City.

FRANKLIN A. WILCOX,

Of Counsel.

United States Supreme Court,

ON APPEAL FROM THE CIRCUIT COURT,

For the Eastern District of New York.

No. 56, October Term, 1887.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited),
Appellant,

versus

THE PHOENIX INSURANCE COMPANY,
Appellee.

(No. 57)

SAME,
Appellant,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA,
Appellee.

Brief on the part of the Liverpool and Great Western Steam Company (Limited), Appellant.

The above are Admiralty causes *in personam*, brought by the above named Insurance Companies as libellants against the above named Steam Company, as owner of the steamer Montana, to recover for damages and loss to cargo shipped on board of said steamer.

The process contained a clause of foreign attachment, under which the steamship "Nevada," belonging to

the appellant, was seized, and in order to procure a release of the vessel, appellant appeared in the action, and executed the usual stipulations.

The libellants were underwriters on the cargo and, having paid the loss on cargo arising from the stranding of the vessel bring these actions as subrogated to the rights of the shippers and owners of the cargo. They recovered decrees in their favor in the District and Circuit Courts. From the decrees of the Circuit Court, the Steam Company appealed to this Court.

The causes in the District Court are reported in 17 Fed. R. 378, and in the Circuit Court in 22 Blatchford, 372.

The questions presented here for argument are:

(1). As to the right of the steamship owner to limit or exempt himself from liability, by contract, for loss or damage to cargo caused by error of judgment or neglect of the master and mariners of the vessel on a foreign voyage.

(2). Whether the owner of a foreign or British steamer, in respect to cargo taken on board for a foreign voyage, is fairly to be considered as coming within the common class or category of common carriers, such as railway carriers of passengers for hire, to the extent of precluding him from validly contracting for limitation or exemption from liability for loss of cargo owing to the error of judgment or neglect of the master and mariners on the voyage?

(3). Whether the libellants are not equitably estopped, being the underwriters of the cargo, and being presumed to have knowledge of the clauses in the bills of lading, which exempted the ship carrier from loss for neglect of the master and mariners, and having with such knowledge taken upon themselves such risk, including barratry, &c., under their policy of

insurance, and received a premium therefor; and would it be just and reasonable that they should recover herein?

(4). It appearing that, by the provisions of certain of the bills of lading of the cargo in question, the carrier, should have full benefit of any insurance that might have been effected upon or for account of said goods, whether, in respect to such cargo, damaged or lost, the libellants, suing as underwriters and claiming by right of subrogation, can recover.

(See bills of lading, pages 10, 24, 54 of record).

(5). On the facts, as found by the Circuit Court, can such neglect be imputed to the master and mariners, as would render the ship owner responsible, applying the test, what is a just and reasonable contract for limitation or exemption of the ship owner from liability for loss of cargo on the voyage?

(6). Supposing a case of conflict of law, what law should control when the facts appear that by the law of the place of contract, and by the law of Great Britain where the vessel was registered and her owners domiciled, and where the contract was to be finally carried out or accomplished and where the stranding of the steamer took place, out of which the damages claimed in these actions arose, the shipowner had the right to contract with the owner and shipper of cargo for such limitation and exception?

POINTS.

I.

The steamship owner had the right to limit or exempt himself from liability by contract for loss or damage to cargo caused by error of judgment, or neglect, of the master or mariners of the vessel on a foreign voyage.

The bill of lading expressly exempted the respondents

from liability, as above stated, in respect to the accident in question in whatever way caused "by the negligence, default or error in judgment of the master, * * * crew, or * * * employees" of the respondents.

This was the deliberate agreement between the parties, entered into with full understanding, and it does not appear that any complaint has thus far been made by the shipper or consignee in respect thereto, or that they claim to be absolved therefrom in any particular. It remains to be seen whether the libellants, by virtue of their contract of insurance, can step in and successfully claim that this agreement, thus deliberately entered into between the immediate contracting parties, shall be set at naught.

The contest is now between the carriers, who were to receive nothing but their freight in case the merchandise was delivered, and the libellants, who held themselves out to the world to assume all such risks, in consideration of a reasonable premium which in this case it is not disputed they have received.

It is not contended that the risk of the accident in question was not an insurable risk, even though it should happen by gross negligence or wilful intent. It is not contended that the ship was not seaworthy, well and properly officered and manned, and in every way fitted for the voyage in which she was engaged. It is not contended that the master, and officers, and crew were not thoroughly competent for their respective positions. The fact is that, at the time of the stranding and for a long time previous thereto, the master and officers were on the bridge, the wheelsman at his station near them, and a double lookout forward; the two officers on deck had had great experience in the navigation of the

Irish Channel, and both held first class English Master's certificates.

It cannot be contended that there was any neglect on the part of the respondents, the owners of the vessel, or that the stranding was in any way directly caused by them. On the contrary, they have acted, in all respects, with all the prudence which the law could expect of them.

That such an accident might be caused from the error of judgment, or even neglect, of those placed in charge of the vessel, was a thing which prudent persons might anticipate, having regard to the infirmities of human nature; and whether the accident arose from error of judgment or neglect of the duly licensed master and officers in charge of the vessel, it cannot be contended that such risk was not expressly provided for in the contract of affreightment and assumed by the shipper.

It must be borne in mind that the master of the vessel differs from the ordinary agent in that he is primarily liable to the shipper for neglect.

The pure and simple question for the Court to determine in this case, therefore, is this, to wit :

Are carriers of merchandise by ship responsible for those accidents which arise from the neglect of the master, and which fall properly on the underwriters?

Said Mr. Justice Bramwell, in Grill agst. The General Iron Screw Company, 1 Law Reports, 1867-68, Common Pleas Cases, 476–480:

"There is nothing unreasonable in a shipowner, hav-
"ing once put on board a competent captain and crew,
"stipulating that he will not be responsible for accidents
"arising from their negligence, the owner of the goods hav-
"ing a remedy against the underwriters."

The libellants contend that, in respect to this loss, the respondents (although there is an express agreement to the contrary), are not relieved in law from being insurers for the negligence, as they charge, of the master of the vessel.

We submit that this position is not tenable under any decision of this State or of the Federal Courts, nor is it the

law of the flag of the vessel, to wit, Great Britain, nor the law of the domicile of her owners.

(1.) In respect to the law of New York, which is the *lex loci contractus*, it is to be observed that the language of the highest tribunal of the State is as follows: (Maynard agst. the Syracuse Railway Company, 71 N. Y., 184):

The shipowner has exemption by the law of New York.

"The right thus to stipulate has been so repeatedly affirmed by this Court, that the question cannot properly be regarded as an open one in this State."

This, therefore, is the law of New York, even as regards railway carriers of passengers.

And in the last reported case of the same high tribunal (we might add of the first commercial State of this country) exemption was extended to a shipowner for actual theft, by the purser of a steamer, of a bag of gold coin, shipped on board under a bill of lading excepting loss from theft on land or afloat, barratry of master or mariners.

Spinetti *vs.* Atlas Steamship Co., 80 N. Y., 71.

The Court will note especially the discussion of the law of barratry in this case.

This is the settled law of the place where the contract was made.

(2.) The contract was to be chiefly performed on board of the vessel, a part of the British territory, as is well settled; a floating island of Great Britain (Lloyd *vs.* Guibert, 10 Jurist (N. S.), 949).

(3.) The contract was to be finally executed in the port of Liverpool, in Great Britain; and the place where the breach thereof, or the damage or loss occurred, was within the territorial limits of Great Britain.

The law of Great Britain coincides with the law of the chief commercial State of the Western Hemisphere in this respect. The law is that for the damage or loss in question the carrier can limit his liability. This was so declared as early as 1815 in Maving *vs.* Todd, 1 Stark, 72, followed a

year later by Leeson *vs.* Holt, 1 Stark, 186, and by a line of decisions from The York, Newcastle, &c., Railroad Co. *vs.* Crisp., 14 C. B. 527 (1854) to Taubman *vs.* Pacific Steam Navigation Company, 26 L. T. N. S., 704 (1872, 1 Aspinall, Mar. Cases, 336, and The "Duero," Law Reports Adm. & Ec. Vol. 2, 396. (Dr. Phillimore,) 1869.

The shipowner has exemption by law of Great Britain.

Maving *vs.* Todd, *supra.* The Court held that a carrier may not only limit, but exclude all responsibility by notice.

Lord Ellenborough's opinion.

And Lord Ellenborough said: "Since they can limit it "to a particular sum, I think they may exclude it altogether" (73.)

In Leeson *vs.* Holt, *supra*, Lord Ellenborough again said (p. 187:) "If this action had been brought twenty "years ago, the defendant would have been liable, since "by the common law a carrier is liable in all cases ex- "cept two. * * * * It was found that the common "law imposed upon carriers a liability of *ruinous extent*, and "in consequence, qualifications and limitations of that lia- "bility have been introduced from time to time, till as in "the present case, they seem to have excluded all responsibili- "ty whatever, so that under the terms of the present notice, "if a servant of the carriers had in the most wilful and wan- "ton manner, destroyed the furniture entrusted to them, the "principals would not have been liable. If the parties to "the present case have so contracted, the plaintiff must abide "by the agreement. * * * The question then is whether "there was a special contract."

The "Duero" Law Reports (1867-68,) Ad. & Ec., Vol. 2., p. 396. This case was to recover for damage to 180 bags of nuts, caused by the negligence and default of the master, the question being whether the defendant was protected from liabilty by the terms of the bill of lading; among the causes of damage excepted was default or negligence of master, pilot, or mariners.

Opinion of Sir R. E. Phillimore in admiralty.

Sir R. E. Phillimore, in his opinion, uses the following language, (p. 396):

"The conclusion at which I have arrived is, that I have "only to look at the bill of lading as the expression of the

"true contract existing between the parties * * * * * * It "has been contended, among other objections for the plain- "tiffs, that the contract was in itself unlawful, inasmuch as "it professed to provide against due care being bestowed by "the carrier upon the goods which he undertook to carry. I "must observe that it has not *been proved to me that a ship "owner is in the category of a common carrier and that he is "bound as a common carrier* could be bound, under the liability "of an action being brought against him to carry goods gen- "erally, but even if it were so, according to the principles "of the decisions affecting this part of the case, it appears "to me that it is competent to the common carrier to exempt "himself from liability. Assuming for the sake of the "argument, that the shipowner was in the category of a "common carrier, still it would be competent to him under "the authority of the decisions in Philips vs. Clark, 2 C. B. "(N. S), 156, and the Peninsular and Oriental Steam Naviga- "tion Company vs. Shand, 3 Moo. P. C. C. (N. S.), 72, to "have protected himself from liability by such a bill of lad- "ing as this, at all events if not to have protected himself "from his own personal negligence, still to have protected "himself from the negligence of the servants whom he em- "ployed. * * * * * The contract does not appear to "me in itself to have been unreasonable * * * * *I think the "consignee of these goods might protect himself by insuring "against the liabilty which the shipowner declined, so that in "fact, there would, practially speaking, be a transfer of liability "from the shipowner to the underwriters.* That the underwriters "can insure against the negligence of the master, is, I think, "placed beyond doubt by the case of Dixon vs. Sadler, 5 M "& W. 405."

Such is the *lex loci contractus*, such the law while the vessel was performing her voyage, such the law of the place where the contract was to be executed, such the law of the place of the wrong, injury or *delictum*, and

such the law by which the parties must be deemed to have contracted by the execution and delivery of the bill of lading. This, we submit, is good admiralty authority, and should be followed by this Court sitting in admiralty.

But it may be contended that the Federal decisions are to the contrary. We submit that there is no Federal authority in conflict with the law of New York and Great Britian in respect to such a case, the question being as above stated, "Are carriers of merchandise by ship responsible for those accidents which arise from tha neglect of the master, and which fall properly on the underwriters?"

The Federal decisions do not differ in this respect from those of New York and in Great Britain.

In order to fully appreciate the Federal decisions the following distinctions should be clearly kept in mind: The distinction between a railroad company and the owner of a vessel; the distinction between carriers of passengers and carriers of goods or merchandise. A railroad company is *per se* a common carrier; the owner of a vessel need not necessarily be; in fact, in this case, we contend the respondents were not. (York, N. & B. Railway Co. vs. Crisp, 14 C. B., 528, 536; The "Duero," 2 Law Reps. Adm. & Ec. 396 [1869]). The railroad company is, in a certain sense, a monopolist, having the exclusive possession of its railroad track and the valuable franchise for operating it, both granted to it by the public; and while the railroad company has its private rights in respect to the railroad and its franchise, the public has its independent rights which they have never ceded to the railroad company.

Railway carriers of passengers distinguished from ship carriers of merchandise.

On the other hand, the owner of a vessel is a private person; he takes no private or public property for his exclusive benefit, he has no definite route, but his vessel sails the public highway of nations; persons are obliged to patronize the railroad company, but such is the force of competition, in respect to ship carriage, that to-day in the Port of New York if one vessel will not take and assume

the liability of insurer in respect to goods to be shipped, a hundred others will. There is a vast difference between a passenger carrier and a merchandise carrier; the public are interested in the life of the individual, and in a certain sense the individual cannot do what he will with his life; but in respect to personal property, it has been the policy of the law for all ages that its owner may do what he will and enter into what contracts he may in respect thereto, so long as he does not contravene moral laws.

Hutchinson § 67, P. 52, states the law as follows. "Railroad companies are common carriers whether made so by the general statute or by their charters or not; and whenever they are made so by express provisions of law, such provisions will be considered as merely declaratory of the law as it already existed and will neither increase their duties and obligations, nor in any respect qualify their liability. They have sometimes attempted to defend themselves from liability by disputing the proposition that they were common carriers, but the contention has received no countenance from the Courts, and it has been held in many cases for reasons peculiarly applicable to them, that as carriers of both passengers and freight, the rules as to the responsibility of common carriers and of passenger carriers should be applied to them in full force. They have been fostered by the Government, they have franchises granted them which are not enjoyed by other carriers, and by reason of the great facilities which they possess for the transportation of merchandise and all the commodities of commerce, they have obtained in that business almost a monopoly in land carriage. It is but just therefore that in their dealings with the public, whether as carriers of goods or of passengers, they should be held to that strict accountability which the public safety and policy require, as said Shaw, C. J., in Norway Plains Company vs. The Railroad. That railroad companies are authorized by law to make roads as public highways, to lay down tracks, place

cars upon them and carry goods for hire are circumstanced which bring them within all the rules of the common law and make them consequently common carriers. Their iron roads, though built in the first instance by individual capital are yet regarded as public roads, required by common convenience and necessity, and their allowance by public authority can only be justified on that ground * * Being liable as common carriers, the rule of the common law attaches to them that they are liable for losses occurring from accident which may befall the goods during the transit, except those arising from the will of God or a public enemy, "and thus the law has been everywhere held with the most perfect use or unanimity."

"§ 68. With equal unanimity it has been held that express companies are common carriers. * * *"

"§ 73. But it is not to be assumed that in all those cases, the ship, the steamboat, &c., is necessarily and at all events to be held liable as a common carrier for failure to safely transport and deliver whatever may be entrusted to it. * *"

In the case of Wells vs. the New York Central Railroad Company, 24 N. Y. 181, 194, Sutherland, J., speaks as follows: "We have so far taken only a very limited view "of public policy. All laws punishing crime against a person "and against the public health, show that the life and health "of a citizen is a matter of public interest, of the greatest "public consideration. That its citizens constitute the "strength and wealth of a State is an elementary principle "of political economy. It certainly cannot be said that a "man has either a moral or a legal right to speculate with "his own life, or to make any contract to remove the safe "guards which the law places around him.

"It is plain to me from the above general considerations "that the extraordinary liability of the defendants in dam-"ages for negligence as *carriers of passengers* was not de-"clared by law, nor is it enforced by law, for the benefit of

"only the party injured in any particular case, but it was "declared and enforced for the benefit of the public also; "and, therefore, a passenger cannot by contract in advance "of the injury, lay aside even his individual benefit from the "law, or rule of liability."

Railroad Company v. Lockwood, 17 Wal., 357, considered and distinguished from this case.

Carefully bearing in mind the above distinctions, we now refer to the leading Federal case, to wit, Railroad Company vs. Lockwood, 17 Wal. 357, a case, however, in no way in point; but as it contains *dicta* of the Supreme Court, seemingly opposed to our proposition, it will be necessary to consider it in passing on this question.

Railroad Company vs. Lockwood was a case against a railroad company for injury to a drover on the defendant's railroad, travelling by what is called a drover's pass. All that was necessary for the Court to decide was, whether the plaintiff could make a valid agreement, in respect to the risks of his own life, which the law in support of public policy would sanction.

The question actually decided by Railroad Company vs. Lockwood not here presented.

Say the Court, (Bradley, J., page 359:) "THE QUESTION "IS THEREFORE DISTINCTLY RAISED WHETHER A RAILROAD COM- "PANY CARRYING PASSENGERS FOR HIRE, CAN LAWFULLY STIPU- "LATE NOT TO BE ANSWERABLE FOR THEIR OWN OR THEIR SER- "VANT'S NEGLIGENCE IN REFERENCE TO SUCH CARRIAGE."

Four years after Judge Bradley had used this language he remarks in another railroad case, Railway Co. vs. Stevens, 98 U. S. Rs. 660:—"*The conditions on which public service will be performed by private enterprise are not yet entirely settled. We deem it the safest plan not to anticipate questions until they fairly arise, and become necessary for our decision.*"

So it will be seen, from the above, that the question before the Court related simply to carriers of passengers and their peculiar relations to the public; it related only to carriers by rail and not by ship or water, and not to mer-

chandise; anything more in the opinion is simply *dicta* and not binding on owners of vessels who, we submit, have never had their day in Court.

Chief Judge Selden, in Perkins vs. N. Y. Central R. R. Co. 24 N. Y. 196, 216, as late as 1862, stated "*that no such "principle had ever been applied to transportation by vessels or "steamboats.*"

In this connection he uses the following language: "It is "however suggested * * * * that on "account of the very dangerous consequences and great loss "of life which attend accidents upon railroads, public policy "forbids that the railroad companies should be permitted to "exempt themselves by a contract from those responsibilities "for the safety of their passengers which the law devolves "upon them. This position calls upon this Court to intro- "duce a principle entirely new; it is not pretended that there "is any precedent for such a rule. Passengers have been "carried by stage coaches for centuries without the obliga- "tion of any such restriction upon the natural right of "individuals to take care of their own interest and to pro- "vide for their own security. It may be said, that travelling by railroad is more hazardous than by any other modes;- "statistics would seem to prove the contrary; but this is "immaterial. The question is whether the principles of the "common law, which have always permitted men to manage "their own affairs, and to make their own contracts, provi- "ded they involve nothing immoral or illegal, are to be ad- "hered to. * * * * * If, however, it should ever "prove productive of evil consequences, which I do not "apprehend, it would, I think, be better to leave the remedy "to the Legislature than for the Courts to break in upon the "settled rules of law in respect to the rights of individuals "to bind themselves by contract. To establish the principle "contended for would be an act of pure judicial legislation, "and would, in my judgment, be an unwarrantable assump-

The principle decided by Railroad Co. v. Lockwood has never been applied to transportation by vessels or steam boats.

"tion of power. It would not be the mere application of a "principle already established to a new class of cases, which "is within the province of the Courts, but the introduction "of a new principle which has neither precedent nor analogy "to support it. To this I am opposed."

We believe that a careful research of authorities will fully support the statement of Judge Selden, that "*no such principle has ever been applied to transportation by vessels or steamboats.*"

It is a little remarkable that, while there have been so many English cases reported, and quite a number of New York cases in respect to carriers of merchandise by ship, there is hardly a case, bearing at all on the question involved, reported from the Federal Courts, at least from the Supreme Court.

A case somewhat analogous is the New Jersey Steam Navigation Company vs. The Merchant's Bank, 6 How., 344. There the Merchant's Bank had delivered to an express company money which was being transported on the steamer Lexington at the time of her burning on Long Island Sound, in 1839. Among other points, it was decided that the Lexington was not seaworthy in respect to certain matters. Note particularly pp. 384-5. Of course, in such case it is well settled that the owner cannot be exempt from liability, and the case was decided against the shipowner the Court not passing upon the point whether a common carrier, as it seems to have been assumed the respondents were in the case, could exempt itself from liability for gross negligence ; but it was held that it might by contract become an ordinary bailee for hire (p. 382) ; but at page 383 we find the following language : "If it is competent at all for the carrier to stipulate for the gross negligence of himself and his servants or agents in the transportation of the goods, it should be required to be done at least in terms that would leave no doubt as to the meaning of the parties."

The relations between the owners of the "Lexington" and its master might properly be considered as those of principal and agent, and not dissimilar to the case of a railway or a canal; but it will be seen that in a case of ship carriage not *infra corpus comitatus*, thus differing from the Lexington case, there is a primary liability on the part of the master for neglect which it is competent for the ship carrier to throw off, as is more fully argued below.

It will be observed that Judge Bradley, in his opinion in Railroad Company *vs.* Lockwood, *supra*, cites and comments upon many cases, but with, we believe, the exception of the "Lexington." (New Jersey Transportation Company *vs.* The Merchants' Bank, *supra*;) Dorr *vs.* N. J. S. N. Co., 4 Sandford, 136, reversed on appeal, 11 New York, 483, and The "New World," 16 How., 474, where the question is not considered, the cases cited are all or nearly all railroad cases having regard to *carriers of passengers;* and the test finally applied by Judge Bradley *in respect to such cases*, is whether the contract is "*just and reasonable*;" and the Court holds that it is not "*just and reasonable*" that such a carrier should be exempted from liability.

This expression "*just and reasonable*," was doubtless taken from the language of the Act of Great Britain known as the "Railway Traffic and Canal Act," 17 and 18 Victoria, Chapter 31 (1854,) which prohibits Railroad and Canal Companies from limiting their liability by notice, but allows them to do so by express contract, when in the opinion of the Court such limitation is "*just and right.*"

By Railway Traffic and Canal Act (1854), 17 & 18 Victoria, Chap. 31, railroad companies permitted to limit liability when it is just and right

We observe that the language of Judge Bradley, in Railroad Company *vs.* Lockwood, *supra*, when he uses the word "carrier" or "common carriers" was evidently in reference to passenger carriage by railroad, which was like the case then under consideration, and like most of the cases cited in his opinion; and the case decided this and nothing more: that the carrier of passengers by railroad could not limit his liability by express contract in respect to his own or his servant's negligence; or, as the question is stated by Judge Bradley,

The real question decided by Railroad Co. vs. Lockwood.

p. 359 : "*The question is therefore distinctly raised, whether a railroad company carrying passengers for hire can lawfully stipulate not to be answerable for their own or their servant's negligence in reference to such carriage.*"

That this and nothing more was decided would seem to appear from the language of the same Court in Railway Company *vs.* Stevens, 95 U. S. Reports, 655—660, above cited. Says Judge Bradley : "We are aware that reputable tribunals have asserted the right to stipulate from exemption in such cases (a railroad case) and it is often asked with apparent confidence, 'and may not men make their own contracts ?' or, in other words : 'May not a man do what he will with his own ?' But there is a question lying behind that. Can an owner call that his own which he holds as a great public trust from the public grant, and for the public use as well as his own profit? The business of a common carrier, in this country at least, is emphatically a branch of the public service, and the conditions upon which that public service shall be performed by private enterprise, are not yet entirely settled. *We deem it a safe plan not to anticipate difficulties until they fairly arise and become necessary for our decision.*"

Referring more particularly to these vessel cases, it will be seen that in the case of the Merchants' Bank *vs.* The New Jersey Steam Navigation Company, 6th How., 382, Judge Nelson, in his opinion, uses the following language : "As the extraordinary duties annexed to his employment concerned only in the particular instances the parties to the transaction, *involving simply rights of property, the safe custody and delivery of the goods,* we are unable to perceive any well founded objection to the restriction, or any

stronger reason forbidding it than exists in the case of any other insurer of goods, to which his obligation is analagous, and which depends altogether upon the contract between the parties. * * * * The right thus to restrict the obligation is admitted in a large class of cases founded on bills of lading and charter parties, where the exception to common law liability other than that of inevitable accident, has been from time to time enlarged, and the risk diminished by the express stipulation of the parties. The right of the carrier thus to limit his liability in the *shipment of goods*, has, we think, never been doubted (p. 384)."

King *vs.* The "New World," 16 Howard, 469, was a case where a passenger was injured by the explosion of a steam boiler, the boat having been found to be racing at the time of the accident. There was no contract limiting the liability. The Court found that the accident had been caused by palpable negligence, and refers to the Act of Congress, July 7th, 1838, providing that, where injuries happen to persons or property from bursting of boilers, &c., the mere fact shall be taken as full *prima facie* evidence of neglect.

The test adopted by the Supreme Court of the United States, in Railroad Company *vs.* Lockwood, and which seems to be followed in subsequent cases, is whether the contract between the railroad and the passenger, whereby the latter agrees to become his own insurer and relieve the railroad company from certain responsibilities which the common law casts upon it, is just and reasonable.

The test adopted in Railroad Co, v Lockwood, taken from the English law. If we follow that law at all, why not entirely?

It seems anomalous therefore that in respect to railway carriage, our Courts should adopt the test provided in what is known as the Railway Traffic and Canal Act of Great Britain, to wit, that such carriers shall not be permitted to exempt

themselves from liability, unless it shall appear to the Court trying the case, that such exemption is just and reasonable, and at the same time should reject the settled law of England should reject that a ship carrier can by contract exempt himself from responsibility, even for gross negligence of the master and mariners. If we are to be governed by the English law at all (Loyd *vs.* Guibert, *supra*), it would seem to be more consistent that we should follow it entirely, at least as to ship carriage of merchandise. By that law exemption, in such cases, is held to be "just and right."

This case tried by the British act.

But suppose this Court to be trying this case under the British Railway and Canal Traffic Act, and it becomes the duty of the Court to determine whether the contract in question was just and right, it would, in order to satisfactorily answer the question, have to consider among other matters:

(1.) The character of the parties bringing the action; the relation in which they were placed to the public and the nature of the business which they carried on.

(2.) The relations existing between the respondents and the public, if any, and their relations to the libellents, and the character of their business.

Libellants, British under writers, who insured against barratry of master, &c.

Bearing the above in mind, we find that the libellants are marine underwriters, holding themselves out to the world as insurers ready and willing to take upon themselves, in consideration of a reasonable premium paid to them, all marine risks even to the extent of indemnifying their insured against barratry of master and mariners, or in other words, their fraudulent acts, and even the negligence of the officers and mariners of the ship.

Says Allen, *J.*, in Smith vs. New York Central Railroad

Co., 24 N. Y., 239: "A man should not be permitted to con- Judge Allen's opinion.
"tract for impunity from his own criminal acts, but there is
"no reason why he may not contract for impunity from the
"acts of his agents, for whom, and for whose acts, he is only
"pecuniarily responsible in the nature of a guarantor. A
"man may be lawfully insured against risks and liabilities of
"all kinds, and this "among others. The liability of a prin-
"cipal for the acts of his agents is the same as, and no dif-
"ferent from any other pecuniary liability resulting from
"contract and the relation of the parties. There is no re-
"cognized public policy which requires an individual, under
"all circumstances, to bear or be responsible for gross negli-
"gence or even fraud of his agents or servants. Unless he is
"specially exempted by statute or express agreement, the law
"for good reason makes him solely liable. The well known
"rule of *respondent superior*, furnishes the rule in such cases,
"but in fire policies, the insured has indemnity against the
"negligence of his most confidential servants and agents, and
"in marine risks, the undertaking of the underwriters may
"and does ordinarily include the fraudulent and barratrous
"acts of the master and mariners, who are the employees and
"agents of the insured, notwithstanding the acts may con-
"stitute an offense made criminal by the law of the land."
(1 Story's Laws, 14; Cook vs. The Commercial Insurance Company, 11 J. R., 40.)

"The modern cases go far to establish the rule that for
"the conduct of the master or mariners the practical care,
"navigation and management of the vessel after the com-
"mencement of the voyage, the insurers are responsible."

* * * * *

Copeland vs. New England Insurance Co., 2 Met., 440; Dixon vs. Saddler, 4 M. & W., 405.

Baron Parke, in the last case, says: "The great principle
"established by the more recent decision is that if the vessel,
"crew and equipments, be originally sufficient, the insured
"hasd one all he contracted to do and is not responsible for

"any subsequent deficiency occasioned by any neglect of "misconduct of the master and crew.

"In this class of cases the law of *respondeat superior* "adopted as an equitable and reasonable rule in absence of "any contract, is suspended by the agreement of the parties, "the Courts only looking to ascertain what, in truth, the "parties have between themselves agreed shall be the rule "and measure of responsibility. Public policy does not in- "terfere with the freedom of the parties to make such con- "tract as their own interest may dictate, and if a party may "lawfully procure another to indemnify him against personal "loss by insurance against the fraud of his own agents, *a* "*fotoiri*, he may, by the deliberate agreement of a third "person, in respect to whom he stands in the relation of an "insurer for the acts of his servants, under the doctrine of "*respondeat superior*, be relieved from that responsibility. "The party may become his own insurer, as he might have "insured the principal."

Mercantile Ins., Co. vs. Calebs, 20 N. Y., 173.

The Mercantile Mutual Insurance Company vs. Calebs, 20 N. Y., 173, was a case of damage to goods by collision in the canal, the contract of affreightment being that the carriers should have the benefit of any insurance effected by the shipper. The underwriter paid the loss and sued to recover the same. In respect to such an agreement, that Court, citing cases, uses this language (page 177): "The Courts in all these cases say that they see "no reason why parties may not contract as they please "in reference to transportation of goods; that such an "agreement neither changes nor interferes with any rule of "law, nor does it affect public morals or conflict with public "interest. If the owner chooses to take upon himself part "of the risk of transportation, and thereby induces the car- "rier to carry for a less rate of compensation, who has any "right to complain? It is a matter entirely between them- "selves, unless it is the result of a scheme to defraud a third

"person. It has long been determined, both in England and "in this country, that such an agreement is valid and bind- "ing, and in the absence of fraud can at all times be en- "forced. It is equally settled that common carriers have "an insurable interest in the goods they transport, and can "contract for benefit of insurance effected by all owners. "Chase *vs.* Washington Marine Insurance Company, 12 Barb., "595. Vauchetta *vs.* Security Mutual Insurance Co., 2 San- "ford, 490."

Copeland vs. New England Ins. Co., 2 Metcalf, 432 (1841).

In Copeland *against* the New England Insurance Company, 2 Metcalf, 432, (1841), Chief Justice Shaw uses the follow- ing language, very applicable to the facts in this case. "It "is very clear in this case that the immediate cause of loss "was stranding in the night time, which was one of the "perils insured against, and the case supposed is, that this "was occasioned by the default of the mate in not assuming "the command. This default must consist either in the "want of judgment in perceiving and determining that the "master had become so incapaciated as to authorize and re- "quire him to interpose, or in negligence in the perform- "ance of the duty, when the case required. Such a case "may occur in every voyage, and must be considered as one "of the contingencies incident to navigation. It may often "present questions of great difficulty, in acting on which "mistakes of the officer second in command may occur. But "we cannot perceive, why the duty of the mate was not of "a purely official and professional character, growing out of "his powers, and the relation in which he stood as an officer, "and not devolving upon him as the agent of the owners in "any other sense than that in which pilots and all other "officers and mariners are their agents. They are vested "with certain powers to be exercised for the use and benefit "of owners, freighters and underwriters, and all others, who "are directly or remotely interested in the vessel and voy- "age. I cannot distinguish the negligence of the mate in

"the case supposed, from his failure in the performance "of any other duty as a nautical man. *Suppose a case of "loss by stranding, and it could be satisfactorily proved that if, "in a particular emergency sail had been made or taken in, if "an anchor had been taken off, or the vessel put on another tack, "the disaster might have been avoided, it would indicate a simi- "lar mistake of judgment or neglect of duty on the part of the "commanding officer as that in the case supposed. In both cases "it is a mistake or neglect of his peculiar and appropriate duty "as an officer and seaman.*

"For the performance of these duties, we are of the opin- "ion that the owners, as between themselves and the under- "writers are not responsible. A contrary doctrine would "lead to questions of great difficulty, involving numerous "questions of fact of very difficult proof, as to the skill and "seamanship of all the nautical measures taken in the whole "conduct of the voyage. *Besides, these mistakes of judgment "and instances of neglect are incident to navigation, and consti- "tute a part of the perils that attend it, and they can be no more "restrained, prevented or guarded against by the owners than "by the underwriters. The most cautious foresight can only "enable owners to provide a competent crew of officers and sea- "men at the commencement of the voyage.*"

The distinction between the relations of a master of a vessel and the mariners on the one hand, and those between a principal and his agent, is here clearly defined; and this distinction is forcibly presented in the foreign authorities cited below.

See also Phœnix Ins. Co. vs. Erie & W. Trans. Co., 117 U. S., 312.

Again the general nature of the libellants' business, and what marine risks they could take upon themselves, appear from the above quoted decisions. What they did take upon themselves in this particular case appears from these policies of insurance (see policies), which was the risk of barratry of master and mariners, "and all other perils, losses and "misfortunes that have or shall come to the hurt, detriment

"or damage of the said goods or merchandise, or any part "thereof."

This language, we submit, will cover negligence or error of judgment of the master and mariners. In fact, the libellants here having paid the partial loss, allege neglect on the part of officers and mariners, and claim to be entitled to recover for the same, as being subrogated to all the rights of the insured.

We desire now to consider, in the order above laid down, the public and private relations of the respondents, and the general character of their business. Their principal business, like the business of all carriers, common carriers or simply transporters, was chiefly to receive and transport the goods. But the respondents contend here that they were not common carriers in any such sense as to render them liable on the facts herein, and it does not appear that their act of incorporation gave them any privileges, or placed upon them any of the duties of common carriers. (The "Duero," 2 Law Reps. Adm. & Ec., 396, (1869,) Dr. Philimore.) As common carriers, the common law superadded to their principal duty of simply carrying goods, that of insurers; and it remains to be determined, assuming that they were common carriers, whether the law would permit them to throw off that branch of the business which the Common Law, wisely or not, had placed upon them, to wit, that of insurance.

The question presented for determination in this case is so important, and the position taken by appellants being supposed by some to be in conflict with settled law, that we may be pardoned if we further quote somewhat fully from the opinions of learned judges in analogous cases.

Says Judge Campbell, in Dorr *against* The New Jersey Steam Navigation Company, 4 Sanford, 136—146: "The

Judge Campbell's opinion.

"necessity of allowing common carriers *upon the seas* to "make special contracts with owners of property committed "to their care was early recognized, and exceptions in bills "of lading restricting the carriers' liability have from time "to time been added. The same necessity exists as to do- "mestic commerce in this vast country of ours, where inter- "nal trade is so extensive, reaching as it does over the "greater part of the Continent, traversing rivers in length "equal to the distance across the Atlantic, where the "amount of property annually carried is swollen up to thou- "sands and thousands, and hundreds upon hundreds of mil- "lions of dollars, where there exist extensive lines of trans- "portation reaching through different States and controlled "in different parts by several owners, and where insurance "companies are organized for the protection of the owners "of property thus transported."

Smith vs. N. Y. Cent. Railroad Co., 24 N. Y. 222.

Smith *vs.* The New York Central Railway Company, 24 N. Y., 222. The clause in the contract was as follows: "Takes all the responsibility as to injury of himself or stock." Judge Wright, who, by the way, held that in respect to the person a carrier could not limit his liability,

Judge Wright's opinion.

uses the following language in respect to the stock (p. 230): "Was such a contract a valid one? With regard to a "special contract for the carriage of property, there are no "considerations affecting public interest or public policy "forbidding it being made. The parties to such a contract "are alone interested, and, although the carrier exercises a "sort of public employment, the obligations which the law "imposes on him inure exclusively to the benefit of the owner "of the property."

He adds: "But how is it when a railroad company is a "carrier of persons and engaged in the business of operating "a railroad company for the public use? * * The interests of the public alone are to be considered."

Allen, *J.*, p. 238, of the same case, writing the dissenting opinion, says: "The public have no interest in the question "which of two, A, or B, shall take the risk of the seaworthi- "ness of a ship, or the fitness of a railway carriage, or the "care and faithfulness of a third person, and employed in "the performance of a duty in which either or both have an "interest, although by certain general rules, the law has de- "clared, that in the absence of any contract, the risk shall "be upon A, and not upon B, but if B elects to relieve A, "and to assume risks and liabilities, the public are not at all "concerned, and have no occasion to forbid such contract. "The character of the liability which one contracting party "assumes in relief of the other, cannot affect the validity of "the contract, it being wholly personal to the parties. If "one is unwise enough deliberately to excuse another from "gross, very gross neglect, there is no good reason why he "should not be permitted to do so, even for personal neglect "of this character, and there is no good reason why the "contracting party should not be estopped from setting up "a claim against his express contract nor to do so. If the "public have any claim against the negligent party, either "criminally or otherwise, it will not be affected by the con- "tract.

Judge Allen's opinion.

"(p. 239). A man should not be permitted to contract for "immunity from his own criminal acts, but there is no good "reason why he should not contract from such immunity "for the acts of his agents, for whom and for whose acts he "is only primarily responsible in the nature of a guarantor."

"(p. 245). The most common risks in railroad travelling, "arise from the neglect of the engineers, conductors, switch "tenders and other subordinate agents in the progress of "the journey, and such must be supposed to be in the mind "of the contracting parties, when providing for risks by "contract. * * * They are the perils incident to that mode "of transportation, and whether the neglect is such as may

"be called gross in a servant, upon every other occasion "vigilant and faithful, cannot be material. This is one of "the risks which attach to the running of every railroad "train. Some person upon whom the safety of the train de- "pends, may fall asleep, become confused, be suddenly de- "prived of his reason, or purposely do some wicked act by "which the train and all on board may be greatly perilled "and damaged, if not destroyed, and yet as one of the con- "tingencies and risks, it must be held to be in the minds of "the parties, and provided for in the compensation. * * * "(p. 246). There is no reason growing out of the services "to be performed or anything connected with the contract "or duty, or interest of the public which should prohibit in "either class of contracts, by land or water, an express pro- "vision varying and shifting the common law rights, risks "and responsibilities of parties as connected with and inci- "dent to the contract. This, of course, would not give "countenance to the idea that a contract might be made, "authorizing or excusing a criminal act. Such a contract "could not be enforced by either party."

Carr vs. Lancashire and Yorkshire Railway, 14 Law and Equity. Baron Parke's opinion.

In Carr *vs.* Lancashire & Yorkshire Railway, 14 Law and Eq., 340, where the Court held the defendants were not liable for gross negligence under their contract, Parke, B., said: "We ought not to fritter away the meaning of con- "tracts merely for the purpose of making men careful."

Judge Denio's opinion.

In Bissell *vs.* the New York Central Railroad Company, 25 N. Y., p. 461, Denio, J., said: "As to the carrying of property, the English Courts, it must be conceded, do hold that railway companies may, by special contract, avoid negligence of their own servants, though it be called gross negligence. (Carr *vs.* the Lancashire Railway Company, 14 English Law and Equity, 340. "Austin *vs.* Manchester Railway Co., 70 *id.*, 434.) It is not "necessary to determine whether we should decide in ac- "cordance with that doctrine, for there is a manifest dis-

"tinction between a case of property and persons. As to "the former the carrier is an underwriter against all accidents "except in two well-known cases, and may be held liable "without any fault on his part or that of his servants. "While a carrier of passengers can only be made responsible "for actual negligence of himself, or those for whose acts "and omissions he is responsible, it is quite consistent to "allow one who, in the absence of a contract, is a general "and almost universal insurer to qualify his liability by an "agreement with the other party, and still to hold that "where the law for the better protection of life and member "has attached a certain consequence to actual negligence, "the parties cannot, by convention, dispense with so salu-"tary a rule."

Parker *J.*, in Dorr *vs.* The New Jersey Steam Navigation Co., 11 N. Y. 492, says: "Upon principle it seems to me no "good reason can be assigned why the parties may not make "such contract as they please. It is not a matter affecting "the public interest. No one but the parties can be the "losers, and it is only deciding by agreement which shall "take the risk of loss. The law, where there is no special "acceptance, imposes the risk upon the carrier; if the owner "chooses to relieve him and assume the risk himself, who "else has a right to complain? It is supposed that the "extent of the risk will be measured by the amount of the "compensation, and the latter, it will not be denied, may be "regulated by agreement. The right to agree upon the com-"pensation cannot without great inconsistency be separated "from the right to define and limit the risk. The parties to "such transaction are abundantly competent to contract for "themselves. They are among the most shrewd and in-"telligent men in the community, and have no need of a "special guardianship for their protection. It is enough "that the law declares the liability where the parties have

Judge Parker's opinion.

"said nothing on the subject, but, if the parties will be better "satisfied to deal on different terms, they ought not to be "prevented from doing so.

"It is true a common carrier exercises a quasi-public em- "ployment, and has public duties to perform. He cannot "reject a customer at pleasure, or charge any price that he "chooses to demand, and if he refuses to carry goods "according to the course of his employment, without a "sufficient excuse, he will be liable to an action, and "he can only demand a reasonable compensation for his "risks and services, and an action would lie against "him on a tort arising *ex delictu* for a breach of duty. In "such cases, there being no special contract, the parties are "supposed to have acted with a full knowledge of their legal "rights and liabilities, and there may be, perhaps, good "reason for the stringent rule of law which makes the carrier "the insurer against all except the act of God and the public "enemy. But when a special contract is made their rela "tions are changed, and the carrier becomes as to that trans "action an ordinary bailee and private carrier for hire "This neither changes nor interferes with any special rule "of law. It only makes a case to be governed by different "rules. To say the parties have not a right to make that "contract and to limit the precise extent of their own re- "spective risks and liabilities in a matter no way affecting "the public morals, or conflicting with the public interes- "would be, in my judgment, an unwarrantable restriction "upon trade and commerce, and a most palpable invasion "upon public rights."

Judge Gould's opinion.

Judge Gould in Wells *vs.* N. Y. Central Railroad Company, 24 N. Y., 185, says: "Whether founded on public "policy or otherwise, there seems to be nothing illegal in "such contract. It cannot reasonably be said that because

"five or ten persons on a train that carries two hundred, on "such passes there is the less inducement to care on the part "of the company or its agents, or that a feeling of indifference "to human life would be thereby caused. The quantum of "interest, the ratio of motive is too utterly insignificant "when compared with the vast liability not protected by "any contract, and binding the company and its agents to "every measure of caution. That agents will be careless, "that no considerations are sufficient to induce constant "vigilance, we have frequent and terrible proofs; but the "holding of such contracts illegal, would not even tend to "alter the fact."

Judge Smith's opinion.

Smith, *J.*, in case of Perkins *vs.* N. Y. Central Railway Co., 24 N. Y., 203:

"What did the parties mean by this contract? * * * " * * The parties both well knew that railroad acci- dents were of frequent occurence; that railroad travel "was subject constantly to perils resulting from the care- "lessness and negligence of engineers, conductors, baggage "men, breakmen and switch tenders; that trains were fre- "quently thrown off the track or came in collision, and were "subject to a variety of accidents and casualties against "which no human prudence or skill in the employment of "agents could entirely guard, and, that all such accidents "involve undoubtedly more or less loss of life or limb, or "bodily injury and other disastrous consequences. With "perfect knowledge of these facts Mr. Perkins asked for "and accepted a free pass, upon the express condition that "he should assume all risks of accidents * * * Such is "the bargain * * * The defendants, in view of the ac- "cidents attended with so much pecuniary loss resulting "constantly from the negligence of some of their agents, "proposed to carry Mr. Perkins without charge to Albany,

"on condition that he would take upon himself the risk at-
"tending the trip. The question between the parties was
"simply, which should take the risk of such accidents as
"might occur in consequence of the negligence of some of
"the defendant's many agents. Without an agreement ex-
"empting or absolving them from all liability in respect to
"such accidents and the injuries resulting therefrom, the
"defendants would be legally responsible for such injuries.
"Mr. Perkins assumes the risk for himself; he becomes his
"own insurer; he absolved the defendant from all liability
"for any injury to his person from such negligence. It was
"a fair insurable risk, and Perkins agreed to assume it him-
"self."

Mooore vs. Evans, 14 Barb. 524. Wright's opinion.

WRIGHT, *J.* "The law declares the liability of the com-
"mon carrier, and it has been said that it is not the form of
"the contract, but public policy which determines its ex-
"tent, (p. 527). When a duty or liability is imposed by
"law upon an individual acting in a particular capacity, he
"cannot, of course, if he act in that capacity, make a valid
"contract to be discharged from such duty or liability, but
"though an individual may usually exercise the employ-
"ment of a carrier, there are no considerations, unless those
"of public policy, forbidding him, in respect to a particular
"transaction, dropping his public employment and specially
"contracting with the owner of the goods, as a private
"person who incurs no responsibility beyond that of an
"ordinary bailee for hire. And if the owner chooses to
"enter into a special contract he virtually agrees that in
"respect to the single transaction the carrier is not to be
"held in the exercise of his public employment. It is urged
"that the carrier should not be permitted to contract in any
"particular cases to incur a limited liability, as the tenden-
"cy would be to encourage general negligence, fraud or

"crime. The severities of the common law are to hang over "him, and under all circumstances, for the public protection, "whilst other insurers of goods with analogous obligations "are allowed to contract. In any particular instance the ex- "traordinary duties annexed to the carrier's employment do "not concern the public, but only the parties to the transac- "tion. It is a question simply between the owners and the "person who engages to transport as to the safe custody "and delivery of the goods. The tendency to encourage "negligence, fraud and crime is no greater than in many "other businesses or occupations of life, and I see not why, "in this age of civilization, public policy demands that this "particular class of custodians and insurers of property "should be prohibited from making such terms with their "employers as shall be mutually agreed upon and assented "to. Were extraordinary privileges conferred by law on "the carrier, were it an office or employment that could be "enjoyed but by few, with the tendency to a monopoly of "the peculiar business, there might be some show of reason "to guard against imposition by holding, in all cases, the "individual or company engaged in the transportation of "property, as an ordinary employment, to the stringent "obligations of common law. But this is not so, and, like "many others of the industrial occupations of life, it is full "to repletion. There can be no such thing as a combination "amongst those engaged in the business of carrying, by "exacting special agreements to throw off their common law "obligations * * * * * Why should he not be "permitted to do so? I confess I cannot see any stronger "reason in it than in the case of any other insurer of pro- "perty. I am unable to appreciate these overwhelming "considerations of public policy which demand that because "an individual is usually engaged in the employment of a "carrier, he should have the common law liabilities fixed

"on him in all cases, even although the owner of the goods be "willing to contract especially with him, as a private person. "I concur with Mr. Justice Nelson, that I am unable to "perceive any well founded objection to the carrier "restricting his obligations by special agreement, or any "stronger reasons forbidding it than exist in the case of "the other insurer of goods to which his obligation "is analogous * * * * * and which depends alto- "gether upon the contract between the parties. The New "Jersey Steam Navigation Company vs. the Merchants' "Bank, 6 How., 322. Indeed, as Justice Nelson remarks, "prior to the case Gould vs. Hill the right thus to restrict "obligation was admitted in a large class of cases founded "on bills of lading, and charter parties, in which case, when "the bill of lading or charter party formed this contract "in the shipment of goods, and which instruments contained "express stipulations diminishing the risks and enlarging "the exception to the common law responsibilities other "than inevitable accident, the right of the carrier thus to "limit his liability was not doubted.

Judge Nelson's opinion

"We are of the opinion that the case of Gould vs. Hill "ought not to be followed, it being unsound both upon prin- "ciple and authority. It has no precedent that I have been "able to discover either in the adjudication of our own "Courts or Westminister. Its tendency is to impose and "extraoadinary burden upon a class of citizens engaged in "a particular branch of trade through considerations of "public policy that are at least now, in a degree fanciful, "whatever weight may have been once attached to them."

Hutchinson on Carriers, Sec. 235, makes the following instructive remarks as to the history of the law:

History of the Law.

"In this country a contest between the Carrier and his employer upon this question of the Carrier's right to limit his extraordinary common law liability commences, so far as the cases show, in 1838, before the Supreme Court of the State of New York, with the well known case of Hollister *vs.* Nowlen and Cole *vs.* Goodwin. Both turn upon the validity of public notices by stage coach proprietors that all baggage should be at the risk of the owners. Although the amount involved in the cases was of but little value they seem to have been of great interest on account of the question involved, for each of them was argued twice before the Court. The difficulty with the judges was whether they should follow the decisions of the English Courts, which, as we have seen, had long before decided in favor of such notices, or disregard such authorities as post revolutionary and upon grounds of public policy decide the question differently. Their conclusion, after great deliberation, was, that by the common law Carriers never had the right to limit their liabilities by such notices, though brought to the knowledge of their employers, and that upon the ground of public policy it ought not to be allowed that they should: thus arriving at a conclusion directly opposite on both grounds to that to which we have seen the English judges had come."

1838.

Then, as we are aware, followed the celebrated case of Gould *vs.* Hill, 2 Hill 623. It was held that on grounds of public policy a common Carrier could not vary or qualify his common law liability, either by contract or notice. Nelson, C. J., dissented; on what grounds does not appear.

N. Y. Supreme Court, 1842.

Following Gould *vs.* Hill, we have the case of the New Jersey Steam Navigation Company *vs.* the Merchant's Bank, 6 How., 344, where the doctrine laid down in

1848. Gould *vs.* Hill was repudiated by this Court, Mr. Justice Nelson, who had dissented in Gould *vs.* Hill in the Supreme Court of New York, writing the opinion; and at page 383 we find this language: "Although the Carrier was allowed in England and this country to exempt himself from losses arising out of events and accidents against which he was a sort of insurer, yet inasmuch as he had undertaken to carry the goods from one place to another he was deemed to have incurred the same degree of responsibility as that which attaches to a private person engaged casually in a like occupation, and was therefore bound to use ordinary care in the custody of the goods and their delivery. * * * * This rule, we think, should govern the construction of the agreement in question." Then follows, as though Judge Nelson had a sort of prophetic foresight of what would in time become the settled law of his native state, this language (page 383): "If it is competent at all for the Carrier to stipulate for the gross negligence of his servants or agents in the transportation of the goods, it should be required to be done at least in terms that would leave no doubt as to the meaning of the parties."

1850. Closely following the New Jersey Steam Navigation Company *vs.* the Merchants Bank, was the New York case of Dorr *vs.* the New Jersey Steam Navigation Company for damages to goods by the burning of the steamboat Lexington. Both of these cases arose out of the same accident.

In the case of Dorr *vs.* The N. J. Steam Navigation Co., 4 Sandford, Judge Campbell (at p. 143), quotes the language of Mr. Justice Daniel (to be found 4 How., 761), and says: "A carrier may, in a given case, be exempted from liability from loss without fraud by express agreement with the person for whom he undertakes, for I cannot well imagine a principle creating a disability in a particular class of persons to enter into a contract fraught with no

criminal or moral elements—a disability, indeed, extending injuriously to others who might find it materially beneficial to make a contract with them." He then proceeds (page 145): "A common carrier has, in truth, two distinct liabilities; the one for losses by accident or mistake, where he is liable by the custom of the realm or common law as insurer, and the other for loss by default or negligence, where he is answerable as an ordinary bailee. It would certainly seem but reasonable, that he might by express, special contract, restrict his liability as insurer, that he might *protect himself against misfortune*, even although public policy should require that he should not be permitted to stipulate for immunity where the loss occurs *from his own default and neglect of duty*. Such we understand to be the doctrine laid down in the case of the New Jersey Steam Navigation Company against the Merchants Bank, 6 Howard, and such we consider the law in the present case. The right and the power to make such contract is for the benefit of all parties. The owner of the goods may prefer to select his own insurer. He may have confidence in the integrity and good faith of the carrier that his property will not be lost through default or neglect, when he knows that in case of its destruction by fire or other calamity, the carrier will be unable to respond for losses. If no contract can be made, he must pay the carrier for his risk as insurer, and he must also pay a premium to others for his protection against the same loss for which the carrier stands responsible."

This last case came up on demurrer on the plea by the defendant that the liability of the defendant was restricted by the exception of casualties mentioned in the bill of lading, and that the loss in question was occasioned by one of the excepted causes and was without fault or neglect of the defendants.

And the Court held as follows (page 146.) "We are of the opinion that a common carrier, may, by an express, special contract, limit or restrict his liability as an insurer for the safe transportation and delivery of goods intrusted to him."

This case, or a similar one, seems to have been brought in the Supreme Court of New York, and tried before a jury who found for the plaintiff, and an appeal was taken to the Court of Appeals. 11 New York Reports, 485.

Parker J: delivered the opinion from which we have quoted already in this brief. The judgment of the lower Court was reversed and the defendant had judgment in his favor.

In this connection we pause for a moment to call attention to the language of Mr. Justice Daniel in Merchants' Bank *vs.* The N. J. Steam Nav. Co. (*supra*) where the learned Justice says, quoting from foreign authorities, which show the great difference between the rules governing admiralty Courts in respect to commercial questions and those controlling the common law Courts, (and the distinction is always to be borne in mind between the relations of ship owner and master on the one hand, and principal or ordinary carrier and his agent on the other):

"But, in this case, the court have sanctioned a lia-
"bility resting upon common law principles, irrespec-
"tive of any limit imposed either by statute or by
"the rules of the maritime law, and this by means,
"too, of artificial or fictitious constructions, practised
"upon only in the courts of common law, relative to
"the forms of actions prosecuted in those Courts;
"and, for the accomplishment of this object, have per-
"mitted the adoption of modes and proceedings pe-
"culiarly and solely appertaining to the maritime law,

" —a system of jurisprudence essentially dissimilar, a " system which recognizes no such claim as the pres- " ent, but under whose authority the owners would " be wholly absolved by the total loss of the vessel, " and under which they would be permitted to stipu- " late for their own exemption from liability on ac- " count of the barratry or dishonesty of their agents. " *Vide* Abbot on Shipping, p. 294. The incongruity " here pointed out might have been avoided by confin- " ing the parties to their proper forum."

It will be observed that the defendant succeeded in the two Dorr cases, but did not in the case of the New Jersey Steam Navigation Company *vs.* the Merchant's Bank, for the reason, we presume, that the Court found gross personal neglect on the part of the steamboat owners in not furnishing a seaworthy vessel (See 6 Howard, p. 384, 385).

Then follows a line of decisions of the New York Court of Appeals holding that a common carrier can 1876. limit his liability by contract, even for gross negligence (Maynard *vs.* The Syracuse, &c., R. R. Co., 7 Hun, 399).

To the same effect was Cragin *vs.* The New York Central Railroad Company (51 New York, 61). Of this latter case, Judge Bockes, writing the opinion of the Court in Mynard *vs.* The Syracuse, N. Y., B. & N. R. R. Co., *supra*, p. 403, states that it was not referred to by Mr. Justice Bradley in the Lockwood case; perhaps it was not reported when the case was argued. The Court adds "so long as the trader can insist that the carrier shall carry his property under the common law responsibility, there can be no reason founded in justice, convenience, or public policy why he may not voluntarily enter into a contract founded upon sufficient consideration and exempt the carrier from all responsibility

for any degree of negligence, whether it be gross or slight." These were the remarks of the Court in the Cragin case, and Judge Bockes adds, "for aught that appears they received the approval of every member of the Court."

What effect such comparatively recent weight of authority would have had on the mind of the Supreme Court in its decision in the Lockwood case is problematical, but it is to be regretted that in so far as it appears the Court did not have the benefit of that authority.

In reviewing very briefly the English law, it is to be noticed that from the earliest times a broad distinction has been drawn between land carriers (in which are included railway and canal or domestic carriers) and ship carriers. Almost the first intimation from the Courts was to raise this distinction. Said Lord Hale, in the first English reported ship case which was brought against the master (1 Ventris 238) "by the Admiralty Civil Law the master is not chargeable *pro damno fatali* as in case of pirates, storms, &c., but where there is neglit gence in him, he is. The case is not measured by the rules of the Admiralty because the ship was *infra corpus comitatus* * * * *.

Charles II.

"*If the master would he might have made a caution of himself, which he omitting and taking the goods generally, he shall answer for what happens.*"

Anno 24 and 25 Car. 2.

In Lyon vs. Mills, I Smith, 484, Lord Ellenborough refers to a bill brought into Parliament (about the year 1795) to alter the law with respect to ship owners, but it was thrown out, chiefly by the representation of the Law Lords that the *parties might relieve themselves against the liability to the full extent by special notice and agreement.* This case was against the owner of a lighter to recover for damage to a quantity of yarn from

being wet. There was notice limiting the liability of defendant. The vessel was leaking and unfit for the purpose of carrying goods. Said the Court (p. 487) "every agreement must be so fairly construed that the parties shall not take advantage of their own wrong, and construing this agreement in its terms according to the fair meaning of the parties, *it was clearly the object* 1884.
of the parties to secure themselves against the loss in those cases only where the law would have made them answerable for the acts of others, and not where they would be answerable for their own acts. The case is therefore not within the notice."

It will be observed that after this express opinion of 1830.
the Law Lords, about the year 1795, that in respect to ship carriage an agreement such as contended for by the ship owner in the case at bar could be validly made, we have two British Acts, the one known as the English Land Carrier's Act (set out in full in Story on Bailments, Sec. 554, 554a, 554b, 554c), and in 1854 the Railway and Canal Traffic Acts. These acts were to favor 1854.
the Land Carriers. The preamble to the Act of 1830 expressly so states, and was to relieve them from the frequent hardships caused by the carelessness of their servants.

In Nicholson *vs.* Willian, 5 East, 507, Lord Ellen- 1804.
borough in delivering his judgment, said: "Considering the length of time during which the practice of making such special exceptance of goods for carriage by land and by water has now prevailed in this Kingdom under the observation and with the allowance of courts of justice, and the sanction and countenance of the legislature itself *which is known to have rejected a bill brought in for the purpose of narrowing the carrier's responsiblity in certain cases on the ground of such measure being unnecessary*, inasmuch as carriers are deemed fully responsible to limit their own responsibility in all cases by

special contract * * * * we cannot do otherwise than sustain such right".

We have here a broad distinction drawn from the earliest reports of English cases, and thereafter repeatedly declared by the most eminent judges, including the Law Lords, between a railway or domestic carrier by land and a ship carrier by sea. It will be seen, we think, that the test of what is a just and reasonable contract cannot be properly applied to a case like the one at bar.

In the Lockwood case, and the case of Hart *vs.* the Pennsylvania Railroad Company, the court, borrowing the phrase *just and reasonable*, (it is presumed from the language of the British Railway and Canal Traffic Act,) applies the test to cases under that Act; but we have seen that in Great Britain it is the settled law that such a contract as is presented here is valid, and that the Courts will not be permitted to inquire whether the contract is just and reasonable in any case excepting such as are embraced in that Act.

But let us assume *arguendo* that such test is to be applied herein. The rule, of course, can best be proven by the reason of it, and the reason of the rigid rule can no where probably be better found than in the celebrated leading case of Coggs against Bernard, 2 Lord Raymond, 909, 919.

Anno Anne II. Said the Court in laying down the reason for the rule "This is a politick establishment contrived by the policy of the law for the safety of all persons, the necessity of whose affairs oblige them to trust these sort of persons that they may be safe in their ways of dealing; lest these carriers" (this was the case it will be remembered, of the land carriage of a cask of wine) "might have an opportunity of undoing all persons that had any dealings with them by combining with thieves, &c.,

and they doing it in such a clandestine manner as would not be possible to be discovered. And this is the reason the law is founded upon in that point."

Can it be fairly claimed that reason exists to-day? and if the reason fails, the rule also should fall. Wonderful strides have been made in morals and science since the day such reason was given. Great Britain, then with almost impassable roads, infested by highway robbers, and with morals at a low ebb, has since become covered with a net work of railways and electric wires.

Steam and electricity are the twin forces which can almost instantly ferret out and detect a robbery or a combination on the part of a carrier with robbers. In the language of Judge Campbell in Dorr against The New Jersey Steam Navigation Company, *supra*, "the suggestion is that the owner of the goods may prefer to select his own insurer; he may have confidence in the integrity and good faith of the carrier and that his property will not be lost through his fault or neglect, &c."

And it can be simply asserted that no such consideration or reason existed in the minds of the parties in this case when they met and the shipper deliberately took upon himself the risk of stranding the vessel by the neglect of the master or mariners of the ship. The reason given in Coggs against Bernard, a reason only in force in what might be called the dark ages, has, with the advance of civilization in the mother country and in the State of New York, been discarded, and the more equitable rule now obtains even in respect to land carriers.

It is respectfully submitted that the parties in Court, ship owners, have never had their day in Court in respect to the question raised herein.

And this is the first case, in the belief of counsel, in which the questions here presented have come up directly for adjudication. The immediate parties in interest have at stake here about $70,000, and while, therefore, the amount in litigation is large, it will be seen that the principle is of still greater importance.

The simple question to be determined in the Lockwood case, as guardedly stated by the Court, was as regards railway carriers of passengers for hire, and although the Court then did pass beyond the limits of that question and formulated certain rules applicable alike to all carriers, it was not intended, we think, to embrace in these general rules a ship carrier; for as the Court has expressed it, (Railway Company against Stevens, supra Bradley J.) "*We deem it the safest plan not to anticipate questions until they fairly arise and become necessary for our decision.*"

But if the Court should be of the opinion that they are in any way bound by precedent or decision or intimation in any of the previous cases before the Court, we beg to respectfully submit that the history of this Court has demonstrated that the law is not a fixed and unalterable science, and that it has a certain flexibility, so to speak, changing with the ever varying needs of the world.

A great Italian Commentator, who is a professor of law in the Royal University of Genoa, Stefano Castagnola, says: "If there is a subject which rebels at codifi-
" cation, that is the one relating to commercial mat-
" ters," and goes on to say; "While a certain stability
" can be observed to exist in the civil law, as for ex-
" ample, with regard to the provisions relating to prop-
" erty and to the family relations which are still found-
" ed on bases which were transmitted to us from times

" very remote, and their modifications are nothing but
" the slow work of ages, still the commercial law, which
" can well be said to be the creature of modern times,
" is on the contrary subject to a continual variableness.

Introduzione al Commentn del Nuovo Codice di Commercio Italiano, Edition Torino, 1883.

Take, for instance, the question of admiralty jurisdiction. By the earlier cases the test of the admiralty and maritime jurisdiction of the United States District Courts, in respect to seamen's wages, collisions, &c., was tide water, following the reason or rule of the mother country. And accordingly it was held that, in respect to a case of seamen's wages, where one termini of the voyage was not on tide water of a navigable river, the admiralty had no jurisdiction, and hence the act of 1845 was passed ; and in the case of Jackson against the steamboat Magnolia, (20 Howard 301), the Court stated "So long as the commerce of the country was centered chiefly on the eastern and Atlantic ports where the fresh water rivers were seldom navigable above tide water, no inconvenience arose from the adoption of the English insular test of navigable waters; hence it was followed by the Courts without objection or inquiry."

See particularly in this connection:

Steamboat Orleans 11 Peters, 175.
Steamboat Thomas Jefferson, 10 Wheat, 428.
Propeller Genesee Chief against Fitzhugh, 12 Howard, 443.
Fritz *vs.* Bull, *Ib.* 466.
Hine *vs.* Trevor, 4 Wallace, 555.
Jackson *vs.* The Steamboat Magnolia 20 Howard, 296.

So in respect to the cases known as the legal tender cases. Quinn *vs.* Dredlove, 2 Howard, 29, held that the Constitution of the United States recognized only gold and silver as legal tender.

Hepburn against Griswold, 8 Wallace, 603, referring to the acts of 1862 and 1863, making United State notes a legal tender in payment of debts, public and private, held that such acts, so far as they applied to debts contracted before their passage, were not warranted by the constitution.

Railroad Co., *vs.* Johnson, 15 Wallace 195, overruled Hepburn against Griswold, holding that Congress has constitutional power to make the treasury notes of the United States a legal tender in payment of private debts incurred both before and after the passageof the acts.

And then came Juilliard *vs.* Greenman, reported in 110 U. S. 421 holding that such notes could be made legal tender for private debts in time of peace as well as of war.

We have above sketched rapidly the history of the law, particularly in Great Britain and New York. In the latter State, it has been seen that the conflict in respect to land carriage first arose in 1838, and for years New York was a battle field between those contending for the restricted rule and those for the liberal rule; and there we have at last seen the liberal leaders victorious, even in respect to railway carriers of passengers. The history of the law therefore becomes most interesting in regard to that particular class of cases, to wit, Lockwood against the Railroad Company, and Hart against the Pennsylvania Railroad Company. But our historical research has brought into a clear light the marked difference, in the opinion of the Courts of Great

Britain and the State of New York, between land or domestic carriers, particularly of passengers for hire, on the one hand, and ship carriers of merchandise on the other; and while the case of Lockwood and the doctrine there laid down by the Supreme Court are directly opposed to the doctrine of the New York Court of Appeals in respect to such cases, still we find no case in point in this Court inconsistent with the doctrine of the Courts of the State of New York and of Great Britain in regard to the questions here raised; which fully support, as we have seen, the contention of the appellants in this case. The inference, however, is that, as the United States Supreme Court has followed the test in the British Railroad and Canal Traffic Law in respect to land carriage, it will not be guilty of the anomaly of not adopting the English doctrine or test in respect to ship carriage.

Speaking of contracts limiting the carrier's liability, Hutchinson, in his admirable work on "The Law of Carriers," page 180 speaks as follows: "Such contracts are not to be regarded as made solely in the interest or for the exclusive benefit of the carrier, though they necessarily qualify and moderate the harsh terms imposed upon him by law when no express contract is made with his employer. It is supposed, however the fact may be, that the liability of the carrier being lessened, terms correspondingly favorable have been gained by the shipper, and that thus the advantage for such contracts is, to some extent, mutual, * * * page 181, "So it frequently happens that by entering into a contract with the carrier, limiting his liability, the shipper may obtain transportation at greatly reduced rates, which may be regarded as matter of more importance to him than the liability of the carrier."

In this connection, the attention of the Court is directed to the language of this Court in the opinion in the case of York *vs.* The Central Railroad, 3 Wallace, 113, 115, Field, J.: "The point that no consideration was given is answered by the fact that there is no evidence that a consideration was not given for the stipulation. The Company had probably rules of charges proportionate to the risks they assumed from the nature of the goods carried * * * Be that as it may, the consideration expressed was sufficient to support the entire contract made."

The language of this Court is again very pertinent in the opinion delivered by Mr. Justice Blatchford in the case of Hart *vs.* The Pennsylvania Railroad Company, 112 U. S. The Court there held that it was competent for the Carrier to exempt himself from gross negligence to the extent of $14,800 in respect to one horse. The Court remarks, page 340: "The limitation exacts from the Carrier the measure of care due to the value agreed upon. The Carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. The shipper is estopped from saying that the value is greater. The articles have no greater value for the purposes of the contract of transportation between the parties to that contract. The Carrier must respond for negligence up to that value. It is just and reasonable that such a contract fairly entered into, and where there is no deceit practiced on the part of the shipper, should be upheld. There is no violation of public policy. On the contrary, it would be unjust and unreasonable, and would be repugnant to the soundest principles of fair dealing and to the freedom of contracting, and thus in conflict with public policy, if a shipper should be allowed to reap the benefit of a contract if there is no loss, and to repudiate it in case of loss."

In the light of this language, we ask, applying the test of what is just and reasonable, the test applied in Hart *vs.* Pennsylvania Railroad Company *supra*, if these underwriters are not estopped from claiming that the clauses in the bills of lading are inoperative and void, as contrary to public policy, when, by their action, they lull the shipowner into the belief that they are prepared to and will take upon themselves, in consideration of premiums which they charge and receive, this very risk, even of gross neglect and "barratry"? When the loss arises, are they to be permitted to cry "it is against public policy?"

If this Court should adopt the English test, as we do not question they properly did in respect to a railway carrier in the Lockwood case and in Hart *vs.* Railroad Company *supra*, then, consistently, they should adopt the well-settled British law in respect to ship carriage cases, holding that a contract limiting or exempting the carrier's liability is, in effect, just and reasonable and not contrary to public policy, and that our courts, in respect of such a case, are not called on to decide whether the contract is a reasonable one, that question being fixed and determined by the general law of ship carriers.

The Law of Great Britain.

We have above considered the authorities of Great Britain on this subject.

Foreign Authorities.

The foreign authorities fully support our contention and mark broadly the distinction between a railway carrier's case, like the Lockwood case and Hart against the Pennsylvania Railroad Company, on the one hand, and the case of a ship carrier on the other.

The Law of Germany.

The first draft of the Commercial Code of Germany prohibited all contracts limiting the liability of common carriers as laid down in that code.

The second draft expressly stated that such prohibition should not apply to any common carriers, except railroads. This provision gave rise to a long discussion between the railroads who were opposed to the section, and the general commercial interests which favored it.

As a compromise, nothing was said in the Code, as it finally passed, about other common carriers, and the prohibition was applied to railroads, but considerably modified, and in a less stringent form. (See foot-note to Endemann, Handbuch des Deutschen Handelsrecht) 1884, Vol. 3, p. 485.

Under the law as it now stands, it has been expressly decided by the Supreme Imperial Court of Commerce that common carriers, other than railroads, are at liberty to make such contracts limiting their liability.

In the case of Hamburg American Packet Company *vs.* Jahns, Vol. 25, page 181, Decisions of the Supreme Imperial Court, the question involved was, as the head-note states, " Are clauses in a bill of lading " by which the shipper seeks to avoid liability for fraud " or negligence of the crew, admissible?" The facts were that the consignee received the goods in bad condition, and sued the Company, which defended on the ground of a clause in the bill of lading exempting them from all liability for damage caused by gross negligence of the captain or crew.

The Court said, "It is said that the clause is invalid " because it is against public policy to make a contract " for exemption from damage caused by fraud, and be- " cause gross negligence which exists here is to be con- " sidered as fraud. It is unnecessary to decide whether " the latter part of this contention is true, for the rule " that a contract exempting from liability for fraud is " invalid, does not apply to this case. It is nowhere

" forbidden by law, or considered as opposed to good " morals, that a party to a contract, who, in order to " carry it out, must make use of other persons, seeks " to free himself from liability for their fraudulent or " negligent acts, and this is all that is done by this " clause. The appeal which is made to public policy " does not help the consignees, for they have failed to " show that there is any public policy which compels " us to declare said clause void."

Professor Endemann, the latest commentator on German maritime law, in considering the subject, cites this case on page 180, of the 3rd volume of his work, published in 1884, as sustaining fully the proposition that such contracts are valid in Germany. He says that according to the existing law there is no rule which prohibits the making of such contracts, and that the prohibition as to railroads is of strictly statutory origin, and is to be applied to them exclusively.

The Law of France.

French decisions bearing upon the power of ship-owners to limit, by exceptions in a bill of lading, their liability against the negligence of their agents navigating the ship.

Decree of the Court of Appeal of Aix, 16th March, 1875.

WHEREAS, Duclaux Montel and Achard claim from the Messageries Maritimes, a sum of 16800 francs being the value of 4 cases of silk worm eggs, which had been shipped on board the Volga, and which had to be sold by auction.

WHEREAS, they claim that the damage sustained, was caused by a leak which must either have come from a natural defect in the ship, or from want of proper watching on the part of the master, and,

WHEREAS, the Messageries claim on the contrary that the leak was caused by an accident of the machinery which is a case of inevitable accident.

WHEREAS, it is established before the Court, that the water penetrated in the ship, by the small opening in the pipe carrying water to the boilers and which remained open on account of the loss of the valve which was to fill it, and the water penetrated in the forward hatch, and passing through the bunker which was not tightly closed, there rose to the height of 33 centimetres above the bilge without being pumped out in time.

WHEREAS, leaving the facts in their natural simplicity and giving to words their usual meaning, it is not possible to detect there a defect of construction or an accident of the machinery, as the facts thus took place; and it is only possible to see there a piece of negligence on the part of the master, who himself, or through his subordinates should have watched and seen that the missing valve was placed and the bunker tightly closed, and the pumps used so that the water should not rise in the hold.

WHEREAS, the fact is thus determined, and it is admitted

that the damage arises from the master's negligence, and the only question that remains at issue, is to know whether the Company could, as it claims, be legally exonerated from the responsibility resulting from its negligence.

And in this respect:

WHEREAS, the clause of exoneration is written in the bill of lading, signed by the master, and by the shippers, which constitutes between the parties an actual contract ; that this contract binds them unless the conditions which it contains should be contrary to law, to morality, or to public order.

WHEREAS, no existing law prohibits shipowners from exonerating themselves from the responsibility imposed on them by Art. 216 of the Code de Commerce.

WHEREAS, if by virtue of a superior principle which need not be written to be admitted and applied, an individual is not allowed to exempt himself from the responsibility for his own act, it is not the same when one exempts himself from the responsibility for the acts of a third party, when this third party remains subjected to a separate responsibility, and specially when this third party is a Captain who is subjected by the law to a separate, direct, and independent responsibility from that of the shipowner.

WHEREAS ART. 98 of the Code de Commerce gives an example of this privilege of exoneration applying only to the acts of others, and states that the forwarder who does not do the transportion himself, and who ought naturally to answer for the acts of the carrier, whom he selects in his stead, may exonerate himself from this responsibility by a special stipulation.

WHEREAS Art 216 of the same Code, being the one which determines the responsibility of the shipowner, shows that such responsibility is not essential and is not undetermined and absolute, and can always be evaded by the shipowner by abandoning the ship and the cargo, wherefore it

must be said that the clause of which the Company wishes to avail itself, is not contrary to law.

WHEREAS it is not contrary to public order.

Whereas as a matter of fact if public order required that the care of shipowners should be stimulated by necessarily maintaining their responsibility, the law and a unanimios concurrence of decisions would not authorize them to exempt themselves from this responsibility by insuring themselves against the barratry af the master.

WHEREAS the interest of commerce does not require the existence of this responsibility, and the shippers can insure themselves against the risks which the negligence of the master exposes them to and obtain in that way the guarantee which they give up to the shipowners.

Appeal dismissed.

Duclaux et al vs. Comp des Messageries Maritimes. Dalloz 1877, I. P. 450.

14th March, 1877.

COURT OF CASSATION.

Per curiam.

Whereas agreements stand in the place of the law between those who have made them, if they are not prohibited by law, or contrary to public order or good morals.

Whereas no law prohibits shipowners from stipulating that they shall not be responsible for the fault of the Captain, or of the crew, that such an agreement is not contrary to public order or good morals.

That in point of fact, admitting that public order or morality would not allow in principle to exonerate ones' self from the fault committed by one's employees, and if it be true that the Captain is the servant or employee of the shipowner, it is equally true that in the exercise of his command the Captain escapes in fact and at law the authority and supervision of his principal ; for that reason Arts. 221 and

222 (C. Com.) create against him a principal and direct responsibility, and for the same reason, Art. 353 of the same code, of which the broad terms make no distinction, allows shipowners as well as simple shippers to insure against all Faults and omissions of the Captain or the crew, known under the name of barratry of the master.

Consequently, by declaring valid in this case the clause of the bill of lading by which the company defendant declined the responsibilty of the fault or negligences whatever imputable to the Captain, the pilots, the crew or other persons embarked on board, the contested decision of the Court has transgressed no law.

Appeal dismissed.

Duclaux c. Comp. Messageries Maritimes Dalloz 1877. I p. 449.

DECREE OF THE COURT OF APPEAL OF ROUEN.

Le Normant, Iselin et al. vs. Cie Gen. Transatlantique

Per curiam.

As to the clause relating to the Master's barratry.

Whereas, by taking the engagement by the bill of lading of the 3rd April, 1874, to convey from New York to Havre, and to deliver in good order the goods shipped per steamer "l'Amérique" the Company has formally excepted:

"The acts of God, of the enemies, the privateers, fire at sea "or on land, the accidents arising from the machinery or "the boilers, from steam, or any other accidents of the sea, "whether occasioned or not by the negligence, a mistake or "an error of the Captain or of the crew or of the engineers, "whatever may be the nature of these accidents, and what-"ever may be their consequences."

WHEREAS, it has exonerated itself from every responsibility concerning the mistakes or even the errors of the Captain, of the engineers and of the crew.

That the clause is general, absolute and cannot bè contested.

That the shippers argue in vain, that according to the terms of common law, the Company cannot exempt itself from making good her own mistakes, and those of its employers (Art. 1384 C. Code). That the agents imposed upon the shipowners or owners of vessels are particularly situated; that they pass certain legal examinations; and the choice of the Company being limited, it is but just that they be allowed to limit their obligations.

That the law moreover gives to shipowners the privilege to stop the civil responsibility resulting from the acts of the Master through whose negligence goods have perished at sea by abandoning the ship and the cargo, Art. 216, Code of Commerce.

That in such cases an insurance contract being allowed by Article 353 of the Code of Commerce, which furthermore corresponds to Article 28 of the Act of 1681, why should not the stipulations allowed with the insurers result from an agreement freely consented with the shippers who may be by the same means provided against the same risks.

That with regard to the indirect and secondary responsibility of an agent which disappears before that of a master, there is the direct and special responsibility of the master which overrides it, because he has the command of the crew. Against this responsibility of a third party, who at the same time is principal and agent, the law recognizes a guaranty.

The principle which has made the duty of watchfulness of the owner a legal presumption, can well be understood; an atonement is introduced by the law in maritime matters where the distance at which the master and the crew are, the nature of their employment, and their duties prevent the shipowner from watching their acts.

It is the same for forwarders who are responsible for the acts of their agent and who can exonerate themselves

from the guaranty for losses or damages to the goods when the receipt contains a formal stipulation to that effect.

Such an agreement contains nothing contrary to morality, public order or natural equity.

The shippers, or rather the insurers whom they represent in fact, and who have received the premiums charged for the risks, cannot now evade the consequences of the bill of lading the explicit terms of which they have accepted.

It is declared that the abandonment of the "Amerique" on the 11th of April, 1874. is neither due to any special defect of the ship, nor to an accident of the sea. It is declared, on the contrary, that this abandonment is due to an act of the crew for which the Compagnie Générale is responsible, but that the clause of the bill of lading of the 3rd April freely consented to by the loaders, exonerated the company from every responsibility, for this act and with regard to it, etc. Dalloz, 1877 II., p. 69.

"Court of Cassation."

2 April 1877.

Per curiam:

Whereas as a matter of fact, by taking the engagement by the bill of lading of the 3rd April 1874, to convey from New York to Havre the goods shipped on board the "Amérique," the Compagnie Générale Transalantique has formally excepted the acts of God, of the enemies, pirates, fire at sea and on land, accidents arising from the machinery, the boilers, the steam, and all other accidents on sea occasioned by the negligence or the mistakes of the Captain, of the crew or of the engineer, whatever may be the nature of these accidents, and their consequences.

Whereas no law prohibits shipowners from stipulating that they do not answer for the fault of the Captain or those of the crew, that such a convention is not contrary to public order or to morality; that, as a matter of

fact, although in admitting that public order and morality would not allow a person, in principle to exonerate himself from the mistakes committed by his employees, and if it be true that the Captain is the servant or the subordinate of the shipowner, it is equally true that, in the exercise of his command, the Captain escapes, in fact and at law the authority of his principal and his supervision; and, for that reason, the Captain is made answerable by articles 221 and 222 of the Code of Commerce, and has an inherent and direct responsibility, and for the same reason article 353 of the same code, whose general terms make no distinction, allow shipowners as well as the simple shippers to insure against all faults and omissions of the Captain or the crew known under the name of Master's barratry.

Consequently, by declaring valid in this case the clause of the bill of lading by which the Company defendant declined any responsibility for the fault or negligence whatever, imputable to the Captain, the crew or the engineers, the contested decision has not transgressed any law.

Appeal dismissed.

Lenormant, et al. vs. Comp. Gen. Trans.,
(Dalloz, 1878, 1, p. 479).

23rd July; 1878.

"COURT OF CASSATION."

Per curian.

Upon articles 1134 of the Civil Code, and Art 216 of the Code of Commerce.

WHEREAS, the Navigation Company, British India sued for payment of the value of goods shipped on its steamer "Java," and damaged during the passage from London to Algiers, has invoked an exception resulting from the clause inserted in the bill of lading made at London, and by which "the act of God, of the enemies of the Queen, all accidents, "losses and damages arising from the sea and from all acts "of negligence of pilots, of the Captain or crew or other

"employees sbould be at the risk of the shipper," and without denying that the damage of the goods might be attributed to the negligence or fault of the Captain or of persons of the crew; the Tribunal of Commerce of Algiers, took into account, to make way with the exception of the aforesaid clause of the bill of lading, the ground that if the clause discharged the Captain from certain risks, it could not exonerate him in any case from the obligations of public order.

But WHEREAS the issue before the Tribunal had nothing to do with the Captain or his responsibility, but that the Company was only at stake against the defendants, at the action of whom it claimed to be exonerated from the fault of his agents in consequence of the clause of non guaranty inserted in the bill of lading.

That no law having prohibited shipowners from exonerating themselves by agreement if not from responsibility for their own act, at least from the responsibility for the acts of others resulting from Art. 216 C. Com., the clause in dispute was in no way illegal, and that it being inserted in the bill of lading delivered to the shippers it became the law of the parties.

WHEREFROM, it follows that in declaring the Company responsible for the damage, and in giving judgment against it to pay the amount thereof notwithstanding the above clause of non-guaranty, the judgment appealed from has expressly violated Art. 1,134 C. Civ. and falsely applied the article 216 of the Code of Commerce.

Judgment reversed.

Comp. de Navigation British India Steam Co. vs. Stora et al., Dalloz 1878, I p. 349.

24th February, 1881.

CIVIL TRIBUNAL OF PHILIPPEVILLE.

ALGERIA.

Teissier receiver *agst.* Cie Gen. trans.

WHEREAS, the "Compagnie Transatlantique" claims

having the character of fraud. "Whereas, says a decision of the Court of Cassation of the 15th March, 1876, (Sirey 1876-I. 337) P. Journal de Palais 1876-833) it is not allowed by means of an insurance contract or of any other agreement to stipulate in advance the immunity of one's gross negligence, that public order refuses to sanction such an agreement." This implies the right to exonerate oneself from the consequences of any case of light negligenee. But nothing prevents from exonerating oneself, by agreement, from the consequences of the act of another for which one ought to have been responsible. In that way the forwarder can stipulate that he will not be responsible for the negligences of the carrier (Art. 98 Code of Comm). Not only are the shipowners or shippers to be compared to such forwarders, but they are even more favored for though they are legally responsible for the negligences of the Captain, they can according to the very terms of Article 216 of the Code of Commerce, and independently of agreement be exonerated from the responsibility in this respect by abandoning the ship and the cargo. The Compagnie Generale Transatlantique is in this respect but a shipowner ; it stands in that position with its advantages: the highest Court had so decided in favor of the Co. des Messageries Maritimes, the 22nd of May, 1867 (Sirey 1867. I. 357-P. Journal de Palais 1867-965.)

As a common carrier, and the more so on account of its position, it may stipulate an absolute exoneration from the responsibility for the negligence of the captain or the crew. " This responsibility is purely of a civil kind and comes in the second place ; aside of it remains the responsibility of the direct guarantor, the captain." This theory upheld by the Attorney-General, M. de Raynal, see findings adopted by decision of Court of Casssation of the 20th January, 1869, (S. 1869, I. 101, P. 1869, 247), has been since confirmed by numerous decisions of the Supreme Court, rendered in favor either of the company herein appearing, or of other companies of maritime transport. (See the decisions of 14th March,

1877, Sirey 1879, I. 6423, P. Journal de Palais 1879, 1091, 2nd of April, 1878, S. 1878, 12, p. 2, P. 1878, 742 in favor of the Co. Gen. Trans. and 3rd July, 1878, S. 1879, I. 423, P. 1879, 1091, Co. British India Steam, vs. Stora.) To evade these principles the contested decision states that Article 216 of the Code of Commerce maintains the responsibility of the Company if there be no derogatory stipulation, and Mr. Levy has signed nothing. Therefore the delivery of a passage ticket, the insertion on this ticket of the conditions under which the passage shall be effected, the acceptance by the traveller of this ticket, the fact of taking possession of a place on board the steamer by virtue of this ticket, all that in the opinion of the Court of Algiers is of no consequence and without judicial effect. "Nothing proves that the conditions of the passage ticket have been accepted since they are not signed by the passenger." Such a theory oversets itself. If, which we think impossible it were to prevail, all the contracts which can only be proved by the delivery of tickets or cards of which the use implies, *ipso facto*, on the part of the person using them the acceptance of the whole and undivisible contract, the obligation to submit himself to conditions even sometimes not expressed on the ticket and to which the co-contracting party means to bind himself towards him would be made away with. A maritime contract of transportation in particular necessarily receives different forms, according to the circumstances under which it is made. If it is a case of shipment of goods on board a ship bill of lading is drawn specifying the conditions of the transportation, discussed and fixed between the parties.

This bill of lading is signed both by the shipper and the carrier: it is drawn in seven originals, two of which are for the captain and the shipowner, in order to secure the recovery of the price of the freight. But it is impossible to submit to such complicated forms the transportation of persons. What is needed above all, considering the haste, is

the rapidity, the simplicity in the recognition of the contract.

What besides is the object? Only to secure to the traveller, the proof by which he will claim the transportation for which he has paid the price in advance or which is secured to him as in this case, on an order from the State.

Henceforth disappears the necessity of a document drawn in duplicate. (Art. 1325, Civil Code), and even the necessity of the signature of the passenger, since as far as he is concerned he has fulfilled his obligation, has paid the price in exchange of which the ticket containing the receipt was delivered to him. "The passage is only fixed definitely. (Art. 1st of the clauses and conditions), after payment of the price of the place and delivery of the ticket." The ticket therefore is sufficient to bind the passenger towards the Company, to which one-half of the price of the passage belongs, if the passenger is not present at the departure, and also to bind the Company towards the traveller but only to the extent of the restrictions made by it as to its obligations, in the agreement which enumerates them. It is in vain that the eventual defendant claims not to have accepted the conditions stipulated by the company. The latter only took the engagement to transport him under the conditions brought to his notice by insertion in the passage ticket and of which it requested him to take notice by means of a formal written notice upon the ticket. In other words, the Company has offered to convey him under certain fixed conditions. In consenting to take the journey, he necessarily accepted the offer such as it was made to him without being able to change it; once the passage over he can no more pretend to impose on the Company different obligations to those which it agreed to with him, than he might claim a reduction of the price of which the amount (always according to the Art. 1st of the ticket) remains the property of the Company whatever may be the circumstances of the navigation. There-

fore the passenger has not the right to say that he did not take notice of the clauses of the ticket or that he has repudiated them. He must accept them from the instant he executed the agreement of which they made the law.

It is of little moment that these clauses should be written or printed ; if printed, they are not less valid than otherwise, and in fact there is no reason to make any distinction. Moreover the question is not to know whether the defendant has accepted the conditions and clauses of the ticket or not, the only question is, what is the contract, and furthermore, what are the obligations of the Company. The extent of the obligations entered into by the latter can only result from the contract which it delivered to the passenger and beyond the terms of which he can claim nothing from it.

This contract cannot be taken to pieces, and he will not be allowed to avail himself, according, to his fancy, of the clauses which are favorable to him, or to repudiate those which are contrary to his advantage. In receiving the appeal, and in dismissing the decree which is laid before it, the Court of the highest jurisdiction will only follow its own jurisprudence. In a decree of the 5th February, 1873, (S. 1873, I, 105, P. 1873, 238), in a similar matter, and which one might call identical to the one submitted to it to-day, since it was for the loss of luggage accompanying a traveller embarked on board of a steamer, the Civil Chamber of this Court, dismissing a judgment of the Tribunal of Boulogne-sur-Mer, decided that the clause inserted on the passage ticket bearing that the Company was not responsible for the loss of non-registered luggage should be considered as valid, thus recognizing the binding force towards the traveller of the clauses inserted on his passage ticket upon the sole condition that they should not be contrary to public order.

Judgment reversed.

Levy, respt. vs. Cie Gen. Trans., Appt., 1884, Sirey 1, 221.

The Code of Commerce of Italy, promulgated on 31st day of October, 1882, to take effect on the 1st of January, 1883, makes separate provision for carriers by land and by water. Section 416 of the Code of Commerce is as follows:

The sections referred to in this article embody general principles on the responsibilities of carriers. There is no provision marked in the Code of Commerce against similar stipulations made by carriers by water, and much less by carriers in a general ship, who are not deemed common carriers.

Section 416 of the Code of Commerce is as follows:

"In the contract of carriage by railway stipulations "that exclude or limit the obligations or the responsibili- "ties by Sections 392, 393, 394, 400, 402, 403, 404, 405, 407, "408, 411 and 415, are null and of no effect, even if "permitted by general or special rules except when in "consideration of the limitation of liability there should "be correspondingly offered by special rates a diminu- "tion in price from the price established in the or- "dinary rates."

The report of the Minister Minghetti, Minister of Agriculture, Industry and Commerce, at the time of the proposed codification of the commercial laws, shows how this section came to be enacted and throws a great light on the spirit of the law on this subject; (see *Fonti e Moturi Codice di Commercio p Castagnola, Vol. II, p 317*). He says:

"Here also I think it expedient to submit to your "Excellency that it seems to me indispensable that an "express legislative enactment be made in the Code of "Commerce determining that the clauses introduced "by railroadcompanies in their contracts for transpor- "tation, tending to exempt or limit their responsibility "with regard to delay, damage or loss, should not have "validity. Consequently I thought that Article 423 of

"the German Code is useful and conducive to the na-
"ture of transportation by railroads, which (railroads)
"exclude competition and therefore hold a monopoly
" '*de facto*.'

"It is true that even jurisprudence has usually
"invalidated those clauses, and that the Tribunals both
"of France and of Italy have often decided in favor of
"private individuals, compelling the companies to fully
"indemnify them, and denying validity to the clauses
"and to the stipulations that limited their lialility.

"But in view of the tenacity with which the com-
"panies insert those exceptions, it is convenient that
"the law should take away all doubt and should affirm
"that the companies exercising a monopoly '*de facto*'
"which excludes the possibility of a choice, cannot
"with special clauses diminish their responsibility.

"This principle that limits the liberty of contracts
"is derived from public policy; it is added to those
"already consecrated by our laws, according to which,
"agreements offending public policy have no value.

"Thus the economical necessity in railroad matters
"elevates to a principle of public order the rules of the
"contract of carriage.

"And it was following these ideas that I asked the
"Congress of the Exchanges of Genoa whether it was
"prudent to introduce into the Code special legal
"provisions with regard to the responsibility of those
"companies.

"In the fourth session of that Congress some orators
"attempted to set up the principle that there was no
"necessity of special and new laws, because the ones in
"vigor provided sufficiently thereon. But in that same
"session the idea prevailed, by a great majority, that
"the present laws were not clear, and that it was only
"by way of construction and accumulation of texts dis-
"persed, some in the Code of Commerce and others in

"the Civil Code, that the juridical foundation of the "responsibility of the railroad companies can with dif- "ficulty be successfully laid. And, therefore, the ses- "sion proposed, and Congress voted nearly by unanim- "ity certain resolutions which substantially correspond "to the enactment of Section 423 of the German Code."

The section referred to in the German Code is as follows:

"Except as is allowed in the following sections, the "railroads mentioned in section 422 are not authorized "to either exclude or to limit in their own behalf by "contracts, (whether these be general regulations or "special agreements) the application of the provisions "of Sections 395, 396, 397, 400, 401, 408 relating to the "liability of the carrier, in respect to either the exis- "tence, the extent or the duration of the liability, or to "the burden of proof. Stipulations contrary to this "provision have no legal effect."

Besides section 416 of the Code of Commerce of Italy, this Code contains two other sections, which are also made by the Court of Cassation the basis of its argument for its decision in favor of our contention.

Section 491 relates to that well-known article of the Continental Maritime law, whereby owners of vessels can relieve themselves of their personal responsibility for the acts of the master or other agents by abandoning the vessel to the creditors. The other section is 618, wherein barratry is allowed to be made a subject of insurance.

Those sections being as above stated, and the spirit of the law being as above shown, a case came up directly on the point, and was decided in favor of the views taken by the appellants herein, in the first instance and subsequently by the Court of Appeals of Lucca, on the 16th of October, 1885, and then by the Court of Cassation on the 14th ofJune, 1886.

The Courts apparently base their decision in favor of our contention, on the well known principle that "*ubi* "*lex distinguit nec nos distinguere debemus.*"

The facts of the case are to be derived from the opinion rendered by the Court of Appeals of Lucca.

The Court of Appeals of Lucca says :

"Whereas it cannot be admitted that the prime and "determinant cause of damage sustained by a certain "quantity of iron shipped on board the steamer "'Zadue,' was the penetrating of sea water into the "hold, and consequently there is no reason to hold "that the damage was caused by one of the causes "which, according to Art. 400 of the Code of Commerce, "exempts the carrier from responsibility for the loss "and damage of the thing entrusted for transportation. "The officical expert in fact came to the conclusion "that the damage sustained by the merchandise must "be attributed to the dispersion of chloride of lime on "board the steamer, the corrosion of the iron having "taken place either from the immediate contact with "the chloride of lime or by a subsequent development "of chloride.

"Whereas, however, it is claimed by Messrs. Porter "and Mackenzie that the bill of lading by which the "carriage was governed and which constituted the law "between the parties, contained such conditions in "view of which all possible claim against the ship "owner could not stand, whatever may have been the "cause of damage, and even if this were caused by the "negligence imputable to the master ; the bill of lading "after enumerating the various contingencies excluding "responsibility, among which is to be noted the "sweating, leakage, breakage, rust and all damage "caused by stowage and by contact with other mer- "chandise, adds, '*even if each of these perils, causes,* "*or things above mentioned, or the loss or the damage*

" *resulting from the same, were caused by the fault,*
" *default, negligence or error of judgment of the*
" *managing owners, pilots, master, officers, crew,*
" *stevedores, or any other person in the service of the*
" *vessel, or for whose actions the managing owner*
" *would otherwise be held responsible, or from the*
" *vessel not being seaworthy at the beginning of the*
" *voyage, always providing that reasonable care has*
" *been taken to remedy this or any other contingency*
" *excepted.*' "

The Court then continues :

" It is necessary therefore to see if the clause just
" mentioned is valid as the respondent contends, or
" whether as is claimed by the firm of Pieruzzini it (the
" clause) cannot have any juridical efficacy.

" Whereas the question whether the clause by
" which he who undertakes maritime transportation
" stipulates that he is not to be responsible for the
" negligence or the fault of the master and of the crew,
" is valid or not, doctors and jurisprudents have held
" divided opinions ; some contending on the one side
" that it does encourage bad faith and carelessness
" and that it is contrary to the interests of commerce,
" to public policy and to good morals, and some on the
" other hand, that commerce has nothing to fear from
" the clause and that public policy and good morals
" have nothing to do with the clause in question.
" This last opinion now prevalent in France after
" repeated opinions of the Court of Cassation, is the
" one that this Court now freely embraces.

" Without doubt it is a principle of law coherent
" with the dictates of reason and of morals, that no one
" can by agreement free himself of the responsibility of
" his own personal acts and secure impunity even from
" a point of view purely civil.

" But in the present case it is not a matter of such

" direct responsibility ; it is a matter on the contrary " of the responsibility for the acts of others, that is to " say, of a responsibility which is indirect and secondary; " and we cannot see why it cannot be lawful to stipu- " late by agreement for the exemption from the civil " responsibility caused by the act of the direct agent, " and why to a third party should be forbidden to be " contented with the personal guarantee of such a di- " rect agent that is to say, in matters of maritime trans- " portation, of the personal guarantee of the master."

The Court then goes on to quote Section 491 of the code, referring to the right of the owner abandoning the vessel for the purpose of freeing himself from personal liability for the acts of the master to which the owner is not privy ; and the Court then proceeds:

" The owner therefore,can, as a rule, free himself from " responsibility by abandoning the ship and freight ; " and it is well known that many vessels carry merchan- " dise of a value sometimes treble and quadruple that " of the vessel.

" But if the responsibility of the owner had as a basis " an absolute principle of public policy, it cannot be " well comprehended how the law could have granted " the owner of a vessel the right to free himself by a " sacrifice relatively small.

" But it is not enough. From Art. 618 of the said " Code it is seen that the owner can always protect him- " self from responsibility against the prevarications and " defaults of the master by contracting an insurance " against barratry. Now, if the clause in question were " to be forbidden, not even should there be allowed an " insurance having for its object one's exemption from " all consequences for such acts of another. It is claimed " that notwithstanding the insurance the owner of the " vessel always remains responsible towards the owners " of the merchandise who thus obtain a double guaran-

" tee of indemnity; and this is very true, but that power " granted to the owner of a vessel cannot well be recon- " ciled with that absolute principle of public policy in- " voked by those who deny the validity of the clause in " question, and which is a principle of public policy " which would maintain inflexibly the responsibility of " the owner in order that he will not abate his vigilance.

" To confirm the opinion embraced by this Court, it " is well to add that when the Code of Commerce inten- " ded to hold null the clause that excludes or limits the " obligations and responsibilities in matters of carriage, " it has done so expressly.

" Art. 416 of the said Code declares of no effect such " clauses in transportation by railroads, and then only " in case when in consideration of the limitation of re- " sponsibilities there should be a diminution in price " from the one established in the original schedule of " rates.

" If therefore, on the subject of maritime transporta- " tion the law did not repeat such a provision, it is nec- " essary to argue that it meant to leave the interested " parties free to stipulate on those conditions as they " think best for their interests.

" Whereas if the absolute and unrestricted stipula- " tion of exemption of the owner from responsibility " for default of the master, is lawful and efficacious, so " much the more is the stipulation that is to be found " in the bill of lading in this case to be so considered. " It tends in substance to free the owner from the slight " negligence of the master, inasmuch as it is there pro- " vided as above quoted that the stipulation is to have " its effect *always provided that reasonable care has* " *been taken to remedy this and any other contingency* " *excepted.*" (Italics are quotations from the bill of lading.)

" Whereas therefore, the decision appealed from is " to be confirmed."

This case went up to the Court of Cassation.

The Court of Cassation sitting at Florence said:

" Whereas, notwithstanding that the petitioner has " tried to find three distinct errors for reversal, still " these converge into one and the same peint of contro- " versy, and therefore there is only one question that " is now to be examined by this Court of Cassation, and " the question was decided, as one point by the Court " who heard the merits in the decision appealed from, " All that is to be examined is, if in a contract for " maritime transportation, a stipulation that exempts " or limits the responsibility of the owner of the vessel " for the default or negligence of the master or of the " crew, is valid and obligatory; in other words, if the " clause inserted in the bill of lading by which it is " agreed that the owner of the vessel is not to be respons- " ible for the default or negligence of the master or of the " crew is valid and obligatory.

" Such question was resolved by the Court hearing " the merits in the sense sustaining the validity."

" Indeed there is no disposition of law from which " there could be inferred, whether indirectly or by anal- " ogy, a prohibition of the stipulation mentioned."

" Without any doubt a stipulation intended to " exempt the managing owner or the owner from a re- " sponsibility which is immediate, direct and absolute, " by which stipulation, in other words, it is agreed that " he is not to answer for his own acts, is repugnant to " morals and is reproved by all civil laws as one which " would open the door to negligence, to bad faith and to " fraud."

" But this hypothesis is not to be confounded (and " in this precisely consists the error of the appellant) " with the other one which is entirely different, and " which is the subject matter of the present case, where- " by the exemption from indirect responsibility or for

" the act of another is stipulated, and it is also necessary " not to confound the managing owner or the owner " with the master who remains always on the vessel and " who directly and personally performs the transporta- " tion."

" The agreement by which the responsibility of the "owner for the acts of the master and of the crew is stip- " ulated (and which in substance is equivalent, on the " part of the owner himself, to his not assuming the guar- " antee for the act of another, and on the part of the ship- " per, to his contenting himself with the personal guaran- " tee of the master), has nothing which can be considered " unlawful or contrary to good morals, and this is so true " that the previous Code of Commerce in Section 78 ex- " pressly gave power to the forwarder to stipulate for his " exemption from responsibillty, not only for the delay, " but also for the damage or loss of the merchandise. " And be it noted that while it was so provided with re- "gard to the forwarder, the said Code did not contain " any analogous disposition with regard to the carrier, " which confirms the power to stipulate just before allud- " ed to, and furnishes the most irrefutable argument that " if the carrier who performs directly the transportation, "should from a principle of reason and of morals, always " be subject to the responsibility of his own acts, on the " contrary, he who, like the forwarder, does not directly " perform the transportation, cannot, and should not be " forbidden to stipulate for his own exemption from " responsibility, or, in other words not to assume the " guarantee of the act of another."

" Nor is the claim better founded that the said stipula- " tion is against public policy, "*as that which would dis- " turb the regular course of commerce and of navigation " which are matters of general interest :*"* on the con-

*Words in italics are quoted, as we understand it, from points of counsel.

" trary, if the said stipulation be forbidden, there " would result no small damage to commerce which " lives in the liberty of its own contracts, and benefits " by the facilities of exchange and of low price for " transportation, in as much as by economical laws that " do not admit of exceptions the price of transporta- " tion is in relation to the responsibility assumed by " the carrier. It is clear that if the managing owner or " owner of the vessel were forbidden to regulate by " contract his responsibility, the definite result would " be to hamper commerce, the development of which, it " is useful to repeat, is in direct ratio to the facilities " and low prices offered for transportation.

" It is therefore not true that the clause exempting " or limiting the responsibility of the owner for the act " of another is contrary to morals or to public policy, " and the confirmation of the view that it is not sup- " ported, if not by Section 491, certainly by Sections " 618 and 416 of the present Code of Commerce, which " were properly invoked by the decision appealed from " and which the petition on appeal improperly claims " to have been violated.

" Section 618 supports this view because, however " indirectly, it recognizes and sanctions the principle " that the owner of the vessel can by insurance exon- " erate himself from liability for the prevarications and " faults of the master and of the crew known under " the name of barratry. And if it is true, as the appel- " lant claims, that notwithstanding the said insurance, " the owner still remains personally liable towards the " shipper, it is nevertheless not less true that according " to the sense of this provision of law, the exemption " of the owner of the vessel from liability for the pre- " varication and faults of the master and of the crew " can be a subject for contract *i. e.* that a clause on " such matter is not illegal and can validly be stipula-

" ted with an insurer. But if the clause is legal and " valid as against an insurer, it cannot well be com- " prehended why it ought not to be equally so as " against a shipper, when the latter, intervening in the " contract, does by an express clause declare himself " satisfied with the responsibility of an insurer, re- " nouncing to that of the owner of the vessel or (which " in substance is the same thing) by the contract of " transportation, stipulating for the irresponsibility " of the owner of the vessel,and declaring himself satis- " fied with that of the master.

" And not less efficaciously does Section 416 of the " Code support this view, in that in matters of trans- " portation by railroads, it expressly permits the stipu- " lation which limits or excludes the obligations and " responsibilities established in the different sections " therein indicated (among which is Section 400 which " contemplates precisely the responsibility of the car- " rier for the loss or damage of the things entrusted for " transportation), when in consideration for the limita- " tion of responsibility there corresponds a diminution " in the rate of freight.

" If with the first of the above mentioned provisions " of law the owner of a vessel is authorized to free him- " self from liability by means of insurance, and with " the second to stipulate for the limitation and also for " the exemption from all responsibility provided there " be a corresponding diminution in the rate of freight, " it is necessary to conclude that such a responsibility " in the carrier in general, and of the owner in particu- " lar, for the acts of another, has not for a basis an ab- " solute principle of morals and of public policy, as it " is not conceivable that by the enactment of those two " sections, the Legislature meant to offend a principle " of such importance.

" And with regard to Section 416, it may not be su-

" perfluous to recall that the provision limiting the lib-
" erty of contracts passed, not without a very lively
" opposition in the House of Deputies, and not without
" some observations even in the Senate, as an exception
" made to the unwritten law only because transportation
" by railroad, whatever can be said to the contrary not-
" withstanding, constitutes a species of monopoly, and
" so stands recorded in the Parliamentary discussions of
" the law concerning the power to be given to the Gov-
" ernment to publish and put into execution the new
" Code of Commerce, and especially the sessions of 25th
" and 26th January, 1882.

" Whereas on the contrary it is useless to contend that
" in matters of maritime transportation the true guaran-
" tee consists in the vessel and its freight, and so much
" so because the law in Section 673 No. 6 and 675 No.
" 11, declares all claims for indemnity due to shippers
" for omission to deliver the things shipped or for dam-
" age by them sustained through the fault of the Captain
" or of the crew during the last voyage privileged on the
" freight due to the vessel : and that if the shipper were
" compelled to bring action against the master, he would
" find himself in the majority of cases deprived of all
" guarantee. This is in great part true—as it is also true
" that by law the master is responsible also for light neg-
" ligence committed in the exercise of his employment—
" also, that his responsibility does not cease except after
" proof of obstacles arising out of perils of the sea or of
" the act of God, or from defects in the goods transport-
" ed, caused from or by their own nature, or from the act
" of the shipper or of the consignee ;—also, that the
" owner of the vessel is responsible for the acts of the
" master and of the crew ;—and also, that he could not
" even be admitted to prove that he was not careless in the
" choice of his servants, and that he could not prevent
" the acts of the same and for which the law makes him

"responsible (Sections 496, 491, 400 Code of Commerce,
"and argumentatively Section 1153 of Civil Code.)
"But this has nothing to do with the case and con-
"cludes nothing towards the solution of the point in-
"volved in this case which consists, as we said, in de-
"termining, if in a contract of maritime transportation
"a managing owner or an owner of the vessel is for-
"bidden to stipulate that he shall not respond for the
"act of the master or of the crew. This prohibition as
"has been shown, does not find support, not even in-
"directly nor by analogy, in any provisions of the
"written law. It does not descend from the general
"principles of law; it is not justified by any reason of
"public policy or morals, and therefore we must con-
"clude that the aforesaid stipulation can validly be
"entered into and especially so if circumscribed to cer-
"tain cases and only to light negligence, as by unim-
"peachable judgment the decision appealed from holds
"in the present case, and which the Court on the merits
"far from violating, rendered homage to the law and
"to the observance of the stipulation.

"In vain it is also attempted to find an objection to
"the validity of the stipulation in dispute, based on
"Section 491 of the Code, in that said section by pro-
"viding that the owner of the vessel can in any case
"free himself from responsibility from the acts of the
"master by the abandonment of the vessel and freight,
"excludes the power to do so in any other way; such
"is not the sense of this provision which does nothing
"but regulate the responsibility of the owner according
"to the general rules of law independently of any spec-
"ial clause stipulated between the parties with regard
"to same.

"Nor is the other objection of the appellants' of
"greater weight, that is to say, that the responsibility
"of the owner attaches to the essence of the contract of

" affreightment '*in that by the rules that govern it and*
" *because of its special nature, it is allied to a neces-*
" *sary deposit* (depositum necessarium), *in consequence*
" *whereof the exemption clause completely and essen-*
" *tially destroys the nature of the stipulation and blots*
" *out that characteristic* (i. e. *the characteristic of con-*
" *ferring upon the master and upon the managing*
" *owner the position of a necessary depositary*) *because*
" *it cannot be known what a hybrid and strange figure*
" *the contract of affreightment becomes by virtue of*
" *that clause.*'* Refraining indeed from showing how
" very little accurate and far from the truth it is to say
" that the contract of affreightment is allied with a nec-
" essary deposit, suffice it to observe as a complete
" confutation of the objection in question, that by stip-
" ulating for the exemption of the owner, it does not
" certainly follow that all responsibility is eliminated,
" in as much as there remains always that of the master,
" in the good choice of whom first and most of all is the
" owner interested."

" And if it happens that the master is insolvent, this
" cannot in truth destroy completely or partially the
" nature of a contract of affreightment, nor does it make
" it assume, as the appellant has it, a hybrid and strange
" figure ; it, the contract, remains perfectly that which
" it is, just the same as a deposit whether voluntary
" or necessary, and will remain always the same, even if
" the depositary were or becomes insolvent."

The liability of common carriers is laid down in section 91, Code of Commerce. "Carriers and masters " of ships are responsible for all damage to the wares " and merchandise transported by them, except what is " caused by the nature of the goods, by the act of God, " or by negligence of the sender."

The Law of Holland.

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*Words in italics are presumed to be quoted from the points of counsel.

This section is expressly made applicable only to carriers by land and inland navigation.

No such strict liability is, by the terms of the statute, imposed on other carriers.

Even as to those carriers to whom this section is applicable, the Court of Appeals in a decision of 21st January, 1861, held that parties were entirely at liberty to limit the strict liability imposed by law, and that such contracts were not against public policy. (See Cremers—Aantekeningen op de Nederlandische Wetboeken, II, 111.

This decision has been followed repeatedly by other courts (Utrecht, 24th March, 1874, Weekblad van het Recht, No. 3,732. Rotterdam, 29th January, 1881, Paleis van Justitie 1881, No. 17.)

A reference to the foreign law, *supra*, shows that there are no express statutes relating to ship carriers, and the decisions which we have referred to declare the unwritten law maritime, or common law of the seas, in respect to the questions here involved. The distinction between our own country and the foreign countries referred to is that in respect to railway or land carriers we have no express statute limiting their powers to contract, while, as we have seen, such statutes are in force in those countries. But in effect, this Court, in the absence of any express statute, practically follows that of Great Britain. See Hart *vs.* Pa. R. R. Co., 112 U. S., 342, where this Court, referring to the British Railway Act, states that the same rule is a proper one to be applied in this country, in the absence of any statute. We have also seen why the ship carrier was not embraced in any special act, the reason being that the Law Lords, in 1795, stated that it was not necessary, as the carrier already had protection according to the settled law of Great Britain. And reasoning upon principles of public policy we have seen that the other

maritime nations, by the well settled descisions of their maritime courts, have decided that the contract here involved was valid. It is to be borne in mind that this Court, in the hearing and determination of this case, is sitting as a Court of Admiralty, a branch, so to speak, of the Admiralty Court of the world, in which it is important that there be no dissenting opinion.

We quote from the text writers, showing the universality of maritime law: "§ I. Maritime law, as a branch of international law, is the collection of principles and usages that pertains to the rights, duties and obligations of nations with respect to the sea. * * * § II. If we trace this law to its source we shall find that it is not the growth of a single generation, nor the product of a single mind, but the accumulated wisdom of progressive ages and different nations. It is founded on the practices of merchants, the principles of the civil law, approved compilations of maritime rights and usages, such as the laws of Oleron and Wisbury, the writings of eminent jurisconsults and the adjudications of Admiralty Courts of different countries. § III. Composed of such various materials, obtained from such various sources, with no claim to the sanction of mankind, but the inherent equity and justice of its rules, maritime law, by that title alone, asserts an universal sway. It is not the particular law of this country or that, but the general law of nations. * * § VI. Commerce is distinguished from trade; the latter relates to mutual dealings at home, the former to the intercourse of the inhabitants of different countries. * * To regulate the multiform transactions of the former * * * soon required the attention of the early commercial States. Maritime laws were adopted appropriate to the limited wants of an infant trade, but containing, nevertheless, the elements of an expanded system that comprehends

the commerce of the world, and prescribes the rule of decision, in all contested cases arising out of it." Flanders' Maritime Law, pp. 1-3.

Again Benedict says (Admiralty, p. 1, § 2): "The character and pursuits of sea-faring life and of maritime commerce, have in all countries been considered as of a peculiar nature. Their agents and instruments, animate and inanimate, have rights, privileges and liabilities which do not belong to those of the land, and there are rules of conduct and intercourse, as well as courts of justice, codes of law and modes of administering them, which are especially devoted to the relations of maritime affairs. The ships of a nation, wherever they may be, are consided as a part of its territory * * ."

See also 1 Parsons' Ship. and Ad., pp. 1—23: The learned commentator says (p. 23): "Assuredly the growth and extension of commerce, its conformity with the essential principles of justice and reason, and with the needs and progress of mankind, and indeed all its prosperity and all its utility, from the highest to the lowest ground, will be advanced by constantly regarding the laws of commerce as intended to be universal. and therefore by respecting what in them is universal, in preference to that which is local and limited, and by giving to all questions that answer which shall make the principle or precedent resulting from it conform most perfectly with those which the nations have already settled by general usage."

Said Molloy (*De Jure Maritimo, &c.*) B. 3, c, 7., § 15: "Merchandise is so universal and extensive that it is in a manner impossible that the municipal laws of any one realm should be sufficient for the ordering of affairs and traffic relating to merchants. The law concerning merchants is called the *law merchant* from

its universal concern, whereof all nations do take special knowledge."

See also the Maggie Hammond, 9 Wal., 452.

The libellants' counsel, while resting their case below, in respect to the validity of the contract herein, mainly on Railroad Company vs. Lockwood, *supra*, have cited the following authorities in support of their claim :

The City of Norwich, 3 Ben., 573.
Nelson *vs.* Nat. S. S. Co., 7 Ben., 341.
The Colon, 9 Ben., 354.
The Hindoo, 1 Fed., Rep., 628.
The Powhattan, 5 Fed., Rep., 376.
Hart *vs.* Penna. R. R., 7 Fed., Rep., 630.

We will consider these authorities in their reverse order.

Hart *vs.* the Penna. R. R. Co., has already been referred to.

The next case cited is the Powhattan, 5 Fed. Rep., 367. The Disrtict Court simply held that it was negligence for the owners of a vessel to permit the same to lie at a pier, with the between decks full of cattle, during a hot July day, without having any wind sails up. The Court further held that the carrier could not by any form of agreement relieve himself from the consequences of his own negligence (p. 383). This is in no way opposed to the doctrine contended for by the appellants. The absence of the wind sails rendered the vessel unseaworthy in respect to the animals; such an omission would differ in no way from the shipowner not having a proper crew, or proper tackle, apparel, etc.; the omission must be presumed with the shipowner's privity, as it was before the vessel sailed on her voyage and while lying at the

dock. It was not the case of stranding, on the voyage, of a seaworthy vessel, properly officered, manned and equipped, and where the shipowner, if he was to carry on his own business at all, must act through agents. It cannot be claimed that the agent's acts are the owner's acts, where the owner or principal can in no way carry on his business except through agents on the high seas, thousands of miles away from his direct control.

But the Powhattan was reversed, 12 Fed. Rep. 876; whether on the ground of no neglect or of the exceptive clauses in the bill of lading, is a question. In the findings of fact reference is made to the exceptive clauses in the bill of lading, an entirely unnecessary finding if the case turned on absence of neglect on the part of the shipowner.

The Hindoo, 1 Fed. Rep., 628, was a District Court decision, where the Court found that the carrier could not, by contract, relieve himself of liability for a case of goods stolen from the dock after the vessel arrived at her dock and came under the immediate control of her owner; a very different case from stranding on the voyage. The Court bases its decision on the Lockwood case, *supra*, which, as we have argued above, in no way controlled such a case.

A vessel not seaworthy unless properly stowed.

The next case is the Colon, 9 Fed. Rep., 354. The Court found that the damage was "the result of negligent stowage on the part of the ship" (p. 355). The clause in the bill of lading was that "the company is not accountable for leakage or breakage when properly stowed," and the Court held that such a contract was not reasonable. This is good law, because the ship must be properly stowed, as she must be properly manned, tackled, furnished, found, etc., in order

to be seaworthy; and for an unseaworthy vessel the owner is directly responsible. Maclachlan on Ship, (2nd Ed.) page 386; "Stowage of the cargo is "primarily the duty of the shipowner and the "master * * * (p. 387), and if damage accrue, the "master and owners are liable without proof of per-"sonal negligence," The "Duero" Law Reports, Ad. & Ec., Vol. 2, p. 396.

Nelson *vs.* Nat. S. S. Co., 7 Ben. 341, was a case of bad stowage; hence the ship was unseaworthy, hence the owner directly negligent.

The City of Norwich, 3 Ben. 573. The court rests its decision on a foot-note in 1 Parsons' Maritime Law, pp. 171–179, to the effect that the carrier could not contract for exemption from loss arising from his own negligence. It may be remarked that we do not contend to the contrary. What we do contend is, that when a shipowner, who can only act through agents when the ship is on the high seas, sends his ship on the voyage, seaworthy, properly officered, manned and equipped, he is not liable for stranding or any accident on the voyage, even although such accident was owing to the neglect of his agents. The cases cited in the foot-note, if in tended to cover anything but the personal neglect of the owners, it may be remarked, are not in point. The N. J. Steam Nav. Co., *vs.* Merchants Bank, 6 How. 144., as we have seen, held no such doctrine; indeed, the intimation is, that even for the gross neglect of his agents, a carrier could by express terms exempt himself from liability.

Dorr *vs.* Steam Nav. Co., 4 Sanford, 136, also cited in the foot-note was, we have seen, overruled in 11 N. Y. Reps. 485, as early as 1854; and the remaining cases are

cases in Courts of other States, mostly against railroad companies, like Lockwood *vs.* Railroad Co., *supra.*

See Act March 3rd, 1851, entitled "An act to limit liability of shipowners," &c. (9 U. S. Stat. at Large. 635), and providing that nothing in the act shall prevent the parties from making such contract as they please —extending or limiting the liability of shipowners.

The great distinction between this case and an ordinary railway passenger case becomes apparent when it is considered that it has never been the policy of the common law to relieve a land or railway carrier from the full burden of his responsibility; whereas, in respect to ships, the maritime law has for centuries favored the ship carrier, by limiting his liability. In respect to fire happening not through his own fault, the law now is and has been for many years that he has an entire exemption, unless such fire is caused by the design or neglect of such owner. In respect to an embezzlement or any damage, &c., without his privity or knowledge, his liability is limited to his interest in the ship and her freight, so that if the vessel in this case had become a total loss, the libellants would have had no right of recovery.

The Scotland, 105 U. S. Reps., 30. This statute declares the rule which the law-making power of this country regards as most just to be applied in maritime cases.

What Grotius says: "Men would be deterred from owning and operating ships if they were subject to the fear of an indefinite liability for the

And, say the Supreme Court (The Scotland, 105 U. S., 30): "This Statute declares the rule which the law-making power of this country regards as most just to be applied in maritime cases. * * Whenever the public interest requires the employment of an aggregation of capital exposed to immense risk, some limitation of responsibility is necessary, in order that men may be induced to contribute to the enterprise. As Grotius says, in reference to this very matter of shipowners: 'Men would be deterred from owning and operating ships if they were subject to the fear of an indefinite liability for the acts of the masters.'" Jure B. & P., lib. II., ch. 11, sec. 13.

It is to be observed, also, that the policy of the law has been to favor the seagoing or foreign vessel, leaving the domestic carrier by water on the footing of the land

carrier. See sec. 7, Act March 3, 1851, 9 Statutes at large, 635, which provides as follows: This Act shall not apply to the owner or owners of any canal boat, barge or lighter, or to any vessel of any description whatsoever used in rivers or inland navigation (U. S. R. S., secs. 4282–4289.) It is further noted that Section 1 of this act "*Provided that nothing in this act contained shall prevent the parties from making such contract as they please extending or limiting the liability of shipowners.*"

acts of the master."

Domestic carriers by water exempted from provision of act.

Such provision is also to be found in the British Land Carriers Act, referred to, *supra*.

II.

The ship carrier, in respect to cargo, cannot be properly classed with a railway carrier so as to preclude him from making a valid contract relieving him from risk of loss by errors of judgment or neglect of the master and mariners.

This has been incidentally alluded to in the previous Point I., and emphasis has been laid on the broad distinction between a ship carrier and a land or railway carrier recognized by the Laws and decisions of Great Britain and of New York and foreign conntries. See Hutchinson, Sec. 67, page 52.

Under the head of "*Carriers*" (Abbott's National Digest, page 530,) Mr. Abbott, who has great experienc as a digester and also was one of the Commissioners of revision of the United States Revised Statutes, in a "*bibliographic note*" uses this language: "Some digests endeavor to generalize various decisions on express bus-

iness, railroad transportation and affreightment, and to treat all under one general title of 'carriers,' but there are important differences in the law governing different classes of carriers founded on the different modes of transportation they employ. The responsibilities of carriers by steam power are distinctly more stringent. Again, much of the law of the subject is an embodiment of the customs which have grown up among the carriers and their customers. These differ widely with different classes. Again, land carriage is for the most part a question of municipal law brought before the Federal courts in virtue of citizenship of the parties, while carriage by water is a branch of the Admiralty and Maritime jurisdiction, and the municipal law seldom has any influence. Again, as the cases are presented to the Courts, they must always be as to ships, as to railroads, as to expresses, as to steamboats, as to stage coaches; *it is scarcely possible that a decision should be rendered properly embracing carriers at large.*"

We have before seen that the Court of Appeals in Perkins *vs.* The New York Central Railroad Company, (24 New York, 196 to 216) as late as 1862, draws the same broad distinction between principles applicable to transportation by vessels or steamboats and railroad carriers. Said the Court, referring to the contention that vessels could not limit their liability, "*No such principle has ever been applied to transportation by vessels or steamboats.*"

This question has been most ably argued by the Court of Appeals of Lucca. See the law of Italy, *supra.* It will be noted that the distinction there made is, that while, on the one hand, there is a primary liability on the part of the master to the shipper of the cargo for the master's own acts on the voyage, over which the shipowner has no control and as to which he is, at furthest,

a guarantor whose guaranty can be shifted to the cargo owner without affecting any principle of public policy or good morals; on the other hand, the principal is directly liable for the acts of his agent, or, in other words, the agent's acts are the principal's acts under the doctrine of the common law.

III.

The libellants being the underwriters of the cargo, and being presumed to have knowledge of the clauses in the bills of lading exempting the ship carrier from loss for neglect of the master and mariners, and having with such knowledge taken upon themselves such risk, including barratry, &c., under their policy of insurance, and having received a premium therefor, it would not be just and reasonable that they should be permitted to recover herein. They are equitably estopped.

The bills of lading provided, as we have seen, among other things for exemption from liability of said steamship or owners for or on account of "barratry of master or mariners * * * * loss or damage resulting from any * * * * accidents of the seas, rivers and steam navigation of whatever nature and kind soever * * * whether any one or more of all exceptions arise, occur, or are in any way occasioned from or by the negligence, default or error in judgement of the master, mariners, engineers, or others of the crew or any of the servants or employees of the ship owners, or otherwise, however, or from the consequence of any damage or injury thereto, howsoever such damage or injury may be caused, collision, stranding or other peril, and howsoever such collision, stranding or peril may be caused."

Certain of the bills of lading exhibits H. & I. (Insurance Company of North America) and also C. H, & J. (Phoenix Insurance Company) provided also that the carrier shall have the full benefit of any insurance that may have been effected upon or on account of said goods, and also that any damage which shall fall upon the carrier shall be computed at value or cost of the said goods and property at the place and time of shipment. To protect themselves against the risks thus assumed by the respective shippers they caused insurance to be effected with libellants, and the respective policies provided, among other matters, as follows: "Touching the adventures and perils which the said Company is contented to bear and does take upon itself in the voyage so insured as aforesaid, they are * * * * * barratry of the master and mariners and all other perils, losses and misfortunes that shall come to the hurt, detriment or damage of the aforesaid subject matter of this insurance." (See findings of fact, page 36 of the Record.)

The case of the Phœnix Insurance Company (which, it should be remembered, is one of the libellants herein) against the Erie & Western Transportation Company, 117 U. S. Reports, Mr. Justice Gray, delivering the opinion of the Court, is the latest announcement of the views of the Court in respect to this subject. The case, it will be remembered, arose out of the stranding of a vessel on Lake Erie, by the gross neglect of the master and mariners, as found by the Court. The bills of lading provided that the ship Carrier should have the benefit of any insurance effected by the shipper or owner of the property. The Phœnix Insurance Company paid the loss and brought their action against the Erie & Western Transportation Company, owners of the vessel, claiming to be subrogated to the rights of their assured, the shipper, and this Court, affirming the decrees below, held

that there could be no recovery, and cited with approval numerous cases in the lower Courts to the same effect.

There is also cited in the case, (page 325,) the case of Hepburn against the New England Insurance Company, 2 Metcalf, 442. Quoting the language of the Court: "No decision can be cited where in such "a case the underwriters have been held to be excused "in consequence of the loss being directly occa- "sioned by the negligence of the crew. I am afraid "of laying down any such rule. It will introduce an "infinite number of questions as to the quantum of "care which, if used, might have prevented the loss. "Suppose, for instance, the master were to send a man "to the masthead to look out, and he falls asleep, in "consequence of which the vessel runs upon a rock or "is taken by the enemy. In that case it might be "argued as here, that the loss was imputable to the "negligence of the crew, and that the underwriter was "not liable."

It was, we submit, to provide for just such contingencies as above instanced that the owners of the steamship Montana prudently contracted for protection against such risks. In substance the assured was his own underwriter. No law prevented him from so being or contracting, and he had the same powers as had the Insurance Companies in these cases. (See Parsons on Mar. Ins., pp. 14 and 18.) The shipper, in the character of underwriter, receives a premium in the way of reduced freight, and afterwards re-insures the risk with the libellants. Said Mr. Evarts; (See Dorr *vs.* New York Steam Navigation Company, 4 Sanford, N. Y. 141.) "Neither "public nor private necessity or convenience require "that common carriers, on the one hand, should be com- "pelled to be insurers against fire, unless the bailor in- "sist upon it, nor that the bailor, on the other hand be

"obliged to pay rates of carriage which include com-
"pensation for insurance, unless he choosesto do so.
"To legally incapacitate the parties from separating
"by mutual contract the service of transportation and
"the responsibility of insurance, involves this absurd-
"ity." (Citing cases.)

We submit that it being well settled (1st) that the ship owner could have insured this very risk with the libellants, (2d) that the shipper or owner of the cargo could have insured the same risk, and (3d) that there was an agreement between the ship owner and the owner of the cargo, to give the former the benefit of any insurance effected by the latter, in respect to this portion of the cargo, it is respectfully submitted that it is difficult to find any good reason, resting in public policy or otherwise, why the shipper of goods could not lawfully become his own underwriter, in consideration of a premium paid; or in other words, why a clause in bills of lading like the one in question, is not valid in law.

May not a man do what he will with his own? That is the simple question here, although Mr. Justice Bradley, in Railway Company against Stevens, *supra*, page 660, applying such maxim to a Railroad Company, queries: "Can an owner call that his own which he holds as a "great public trust from the public grant and for the "public use as well as his own profit?"

It can certainly make no difference to the public whether A, the ship owner, or B, the cargo owner, or C, the underwriter, take the risk of the stranding of a vessel by the neglect of the master and mariners. A man may not do what he will with his own life. The public in a certain sense, as we have seen, is interested in that, and so this Court, in the Lockwood case, held that no contracts were valid which threw off any safeguard in respect to human life. But it would be subversive of all settled principles and maxims if the public

were in any way to interfere with a man's dealings with his own property, there being no moral crime or turpitude involved in the transaction. It cannot be fairly contended, even if the public were interested in respect to the ship's cargo, that from the mere throwing off by the ship carrier of his character of insurer and becoming thereby a mere forwarder, any less care would be exercised in the carriage of the cargo on the part of the ship owner. But be this as it may, there can be no saving grace in the mere payment of a premium, if it be contended that no premiums were directly paid in this case. If all the safeguard the public have in respect to personal property, if any were needed, is the bare payment of the premium of insurance to an incorporated company of underwriters, then the public have little protection.

Without knowledge, (so far as it appears in the case of the Phenix Insurance Company *vs.* the Erie and Western Transportation Co., *supra*,) of the contract between the shipper and ship owner in respect of the clause giving the benefit of any insurance effected to the ship carrier, the Phenix Insurance Company took the risk and no provision was made in its policy of insurance, which otherwise might have been done if they had known of such agreement. Yet this Court holds such a clause valid, and that the Company cannot recover against the carrier. It would seem that the case at bar is a very much stronger case, in all its equitable bearings at least, when we consider that this Phenix Insurance Company, knowing, as it is to be fairly presumed, that the cargo owner, their assured, had agreed to bear his own risk, deliberately re-insured that risk; it making no difference in the eye of the law, as we have seen, whether they directly insured the carrier or the shipper, even for gross neglect.

Without being guilty of too much repetition we ask

the Court to look upon the case in this light. Take, for instance, the Nashville and Buffalo bills of lading, which contain the clauses giving to the carrier the benefit of any insurance effected by the shipper. The Circuit Court has found, as matter of law, that that clause only covered the land carriage and not the sea carriage. Let us presume that the loss occured on the Railroad and we would then have this singular anomaly, that while under the decision of the Phenix Insurance Company against the Western Transportation Company, *supra*, the Insurance Company could not recover, yet under a clause substantially the same, here contained in the bill of lading, and by which the shipper agrees to take upon himself his own risk and re-insures with the same Insurance Company, the Company *can* recover.

Or again, suppose the Phenix Insurance Company had, as they might lawfully do, shipped on board the steamer Montana a thousand barrels of flour, their own property, and had agreed, in consideration of a proportionate reduction of freight, to take the risk of loss occasioned by the neglect of the master or mariners; and further, suppose that in a second case, in consideration of a premium directly paid by the ship owner, the insurance company agree to insure him, or the shipper of the cargo, against such risk; would it not be anamolous that the former agreement should be held invalid as against public policy, while the latter should be held valid?

Said the Court in the Phenix Insurance Company against the Western Transportation Company, at page 334, of the Report, *supra*, "no rule of law or public "policy is violated by allowing a common carrier, like "any other person having either a general property or "a particular interest in goods, to have them insured "against the usual perils and to recover for any losses, "though such perils were occasioned by the negligence "of his own servants."

By virtue of the agreement thus made between the ship owner and the shipper, the shipper had an insurable interest in the goods in respect to stranding, from whatever cause, which otherwise he would not have had, and the very standing in the Court of these libellants depends upon the validity of such an agreement. They should be estopped in equity from setting up, then, that an agreement by which their assured derived an insurable interest in these goods was against public policy. The law could not permit anything so unfair and so unreasonable as to allow this insurance company, at its option, either to quietly pocket the premiums, taking only the risk of paying the loss and being temporarily out of the money until it could recover it from the shipowner, or to defend an action against it brought by the shipper on the ground that in law he had no insurable interest. If this case is to be decided according to the test laid down in the case of Railroad Company *vs.* Lockwood, then certainly the Court cannot hold that it would be fair and reasonable to decide it in in favor of the libellants under the circumstances.

The shipowner might have insured this very risk with the libellants, or agreed with the shipper for benefit of insurance to be effected by him

As shown above, the ship owner might have insured this very risk with the libellants, and the loss would have fallen on the libellants without right of reclamation from the ship owner; but if this was not done, it was so nearly as to make no difference in the eye of the law. The libellants simply took a risk which this assured had taken, presumably with full knowledge on part of the libellants, and for a consideration which was sufficient in the estimate of the contracting parties; and the libellants have therefore been subrogated simply to the rights and equities of the shipper, to wit, that this particular risk should fall on the shoulders of the shipper and not the ship owner.

If the ship owners in this case could have insured

with the libellants, a regular insurance company, could they not have effected the same insurance with a private individual? Underwriters may act individually, or as partners, or combine into a company; they have no monopoly of the insurance business with shipowners. To all intents and purposes, the owner of this cargo, when he virtually contracted to insure this particular risk, became as much an insurer, and could make as valid an insurance contract, as the Phœnix Insurance Company. His character as a shipper could in no way affect his character as underwriter. "A contract of insurance may be made, generally, by any parties competent to enter into any contract." (Pars. Mar. Ins., p. 18.) At page 14 the same writer says: "In the beginning of marine insurance in this country, it was usually effected by policies, to which individuals subscribed their names, each one being responsible for the sum set against his name and no more." "This is still practiced to a considerable extent in England, and from it grew the use of the word *underwriter;*" (p. 34). "The contract may be oral" (p. 34).

Again, all the parties in interest—the insurance company, shipper and ship owner—have acted as if the contract between the shipowner and shipper was a binding contract. The shipper assumed and acted as if he had the risk, and the underwriters, in insuring him, so assumed and acted. It would be, in the opinion of counsel, unjust and unreasonable at this late day, when all the parties have acted upon the contract, to hold the contract void.

We have above endeavored to point out the difference between this case and other adjudged cases, and in no particular is the difference more marked, in our estimation, than in the one fact that this action is promoted by an

insurance company which had received a premium for taking a risk, which it had knowledge its assured had contracted to assume for a consideration, the latter thereby relieving the shipowner from all liability in respect thereto. We think a reclamation under such circumstances would be grossly inequitable and unfair, having no shadow of reason, not even public policy, to support it.

The libellants should receive no encouragement from the Court, when it must be apparent that they filed their libels and issued process of foreign attachment in order that appellant should be required to surrender itself to the jurisdiction of a Federal Court, which, under the supposed doctrine of Railroad Co. *vs.* Lockwood, would construe the law differently from the *lex loci contractus*. The libellants had regular established agencies in Great Britain, and the losses were there adjusted and paid. See Findings of Circuit Court, Record, p. 17, and Stipulations, pp. 36-37 of Apostles. The actions should properly have been brought in the British forum.

We finally submit that the underwriters' rights rest upon the familiar principles of equity. It is the doctrine of subrogation, dependent not at all upon privity of contract but worked out through the right of the creditor or owner. Paul *vs.* Railroad Company, 13 Wallace, 370.

IV.

It appearing that by the provisions of certain bills of lading of the cargo in question, the carrier should have the benefit of any insurance that might have been effected upon or for account of said goods, the libellants cannot recover for such loss.

See Exhibits H & I, Insurance Company of North

America, and C., H. & J., Phenix Insurance Company, (and see Record, page 35), which provided that the carrier should have the benefit of insurance that may have been effected on account of the goods in question. The Circuit Court gave no effect to these clauses. See page 28 of Record. And the appellant duly excepted (Page 39).

To be sure these bills of lading provide, as between the carrying companies themselves, when their respective duties shall end, and do enumerate what duties each takes upon itself, but they in no way do away with the clause that that company alone shall be held answerable in whose actual custody the same may be at the time of the happening of the loss &c., and the carrier so liable shall have the full benefit of any insurance that may have been effected &c.

This clause was binding between the companies on the one hand and the shipper on the other, and by it the shipper gave the benefit of such agreement to that Company in whose possession his goods should be at the time of the happening of such loss. Lamb *vs.* C. & A. R. R. Co. 46 N. Y. Reports, 290; Ætna Insurance Company *vs.* Wheeler, 49 N. Y., 616; Babcock against L. S. & M. S. R. R. Co., 9 N. Y., 491; Whitworth against the Erie Railroad Company, 87 New York, 413.

The duty under the bill of lading, as between the Railroad Company and the shipper, rested on both companies to carry from Buffalo to Liverpool, or from Nashville to Liverpool, as the case might be, and the reciprocal duty rested on the shipper to give the benefit of any insurance effected by him *to that Company * * * in whose actual custody the goods might be at the time of the happening of such loss.*

And we repeat that the ship carrier is presumed to have paid as much consideration for such agreement as did the railroad carrier.

The other clauses in the bill of lading in no way changed the relations existing between the parties or carriers on the one hand and the shipper on the other. The additional clauses only fixed more definitely where the liabilities and rights of the carriers, *as between themselves*, commenced and ended.

It is not for a moment to be supposed that these bills of lading issued by the Steamship Company should not contain every clause which could protect them as well as the railroad company.

See Record, page 54.

They are entitled as follows :

Foreign Bill of Lading, S. S. Montana.

New York Central & Hudson River Railroad Company and the Guion Line Steamship Company from Buffalo to Liverpool.

Buffalo, New York, to Liverpool, England, by way of New York.

The other bills of lading in question were headed Overland & Ocean Bill of Lading.

Through bill of lading.

Louisville & Nashville Railroad and the Williams & Guion Steamship Company, from Nashville, Tennesee, to Liverpool, England.

The consideration for such agreement, it is presumed, was a reduced rate of freight, as much in respect to the land carriage of the goods as of the sea carriage.

V.

On the facts as found by the Circuit Court, no such neglect in law can be found as would make the ship owner liable under the contract in question.

The approximate cause of this damage was the

The proximate cause of the damage was the stranding of the vessel.

Deceived by shore fog.

There was no neglect, at farthest an error of judgment.

stranding of the vessel, which has been decided to be a peril of the sea. This stranding or peril of the sea grew out of a fog which suddenly came on and as suddenly disappeared, and which, by shutting out the shore lights, misled the officers of the vessel as to their position. To guide them they had their compass and the shore lights on the Irish coast. Based on the careful observation of the Irish coast lights, their compass course and the set of the tide, the officers were misled as to the distance of the Welsh light when first observed. There was no neglect in respect to proper attention to their duties. A careful observation of everything which could inform them as to their position was made. There was a time when they heard the fog gun, which was fifteen or twenty minutes before the stranding, and when they knew they were nearer the shore than they had calculated; but the water along the Welsh shore was deep, 20 to 80 fathoms (p. 40, Record), the vessel was immediately put back on her original course, which, it was agreed by all hands, would carry them well off the Skerries; and with careful officers on the bridge the vessel kept on that course, but in a few minutes thereafter grounded, running so slowly as not to awaken the passengers in the lower cabin directly over the point where the vessel struck.

The accident can fairly be said to have been caused by the fog—at farthest a mere error of judgment. The stranding, under such circumstances, is what might happen to the most careful navigator.

The Adriatic, 17 Blatchford, 194.

Waite, Ch. J., speaking of the collision: "It was a mistake to change,

Says Judge Waite, in the Adriatic, 17 Blatch., 194: "I proceed to the consideration of what seems to me to "be the real controversy in the case, and that is whether, "as a matter of law, the Adriatic was in fault for porting, stopping or backing, or for starboarding on the "order of the captain when he came on deck. There is "now no doubt that, if she had kept her course and

"speed, and the Harvest Queen had done what she, in "fact, did do, there would have been no collision. It "was a mistake, therefore, to change, but a mistake is "not necessarily a fault in admirality. The law re- "quires that those in charge of the navigation of a ves- "sel like the Adriatic should possess a very high degree "of nautical skill. They are charged with the import- "ant duty of directing the motions of the powerful "machinery placed under their control, so as not to "unnecessarily endanger life or property, either on "board or not on board. For this purpose they are re- "quired to exercise good judgment; they need not be "infallible. It is enough if they do what others, hav- "ing the requisite skill, and placed in a like situation, "would have ordinarily done."

but a mistake is not necessarily a fault in admiralty. Those who navigate a ship need not be infallible. It is enough that they do what others would have ordinarily done.

VI.

The rights of the parties under the bills of lading are to be governed by the law of Great Britain and the general maritime law.

What law is to control.

In respect to the United States, New York is a sovereign power as to everything not especially delegated to the general government.

Can it be successfully contended that the status of the parties is in any way changed by the mere selection of the forum, to wit, the United States Court? It is not to be forgotten that the Supreme Court, in the Lockwood case, sat as a common law Court, as distinguished from its functions in an admiralty appeal case.

"Contracts, in respect to their validity, obligation, or

interpretation, are to be governed by the laws of the place where the contract is made, except where they are to be executed in another place, and then the law of the latter place is to govern." Story on Conflict of Law, Sec. 242, Redfield's Ed., 1865.

Pope *vs.* Nickerson, 3 Story, 465.

The leading case in this country is Pope *vs.* Nickerson, 3 Story, 465, decided by Judge Story in a very learned and extensive opinion. There the Court holds that the law of Massachusetts, to wit, the domicile of the owners of the vessel, would control, in respect to a vessel which was owned in the State of Massachusetts, but received cargo at a Spanish port to be carried to Philadelphia, and had put into Bermuda in distress, where it became necessary to execute bottomry out of which a suit arose to charge the owners of the vessel on their general liability. The law of Massachusetts limited their liability in respect thereto, while the law of Pennsylvania did not, nor, we believe, the law of Spain.

Lloyd *vs.* Guibert, 33 Law Journal (N. S.), 2 B., 241, 10 Jurist (N. S.) 949.

The leading English case, decided in 1864, Lloyd *vs.* Guibert, 33 Law Journal, N. S., Q. B., 241, cites with approval Pope *vs.* Nickerson. In that case a French vessel, having a French register and carrying the French flag, and owned by persons domiciled in France, was chartered in St. Thomas, a Danish port, to go to Hayti, and carry cargo from there to Liverpool. In the progress of her voyage she was obliged to put into Fayal in distress, where the vessel, freight and cargo were bottomried. The vessel was thereby enabled to complete the voyage and to discharge her cargo in Liverpool, where the vessel, freight and cargo were libelled, and the owners of the cargo were obliged to pay on account of the bottomry to release their cargo. The vessel and freight were sold by decree in Admiralty and thus abandoned by the owners. By the law of Great Britain, the owner's

liability was not limited. The owners of the cargo brought a suit against the French owners of the vessel, but the Court held that the law of the domicile of the owners of the vessel controlled. The case went up on appeal and was decided in November, 1865, before the Exchequer Chamber, 1 L. R. Q. B., 115, the judgment below being affirmed. The opinion of the Court is most interesting, and is exhaustive of the subject.

The Moxham English Law Rep., Vol. 1, P. D., p. 43.

The Moxham, English Law Reports, Vol. 1 P. D. p. 43, and on appeal, Id, p. 137. An English joint stock company possessed a pier at Malaga, Spain, and instituted a cause of damage against an English steamship which, by the negligence of those in charge, had come into collision with and damaged the pier. The owners of the steamship filed an answer, and alleged, *inter alia*, that the pier formed part of the land of Spain, and that by the law of Spain the master and mariners were alone answerable for the damage. On motión to reject this portion of the answer, it was held that the law of Spain was not applicable; and that by the statutory law of Great Britian a vessel was liable for any damage.

Pritchard *vs.* Norton, U. S. Supm. Court, Vol. 5, Morrison's Trans. 116.

The present case, if considered as an action of tort, would, under this doctrine, be governed by the law of Great Britian. Pritchard *vs.* Norton, U. S. Supreme Court, vol. 5, Morrison's Transcript of Decs. U. S. Supreme Ct., p. 116.

Kentucky *vs.* Bassford, 6 Hill, 526.

Kentucky *vs.* Bassford, 6 Hill, 526, was an action upon a bond, conditioned for the faithful performance of duties enjoined by the law of Kentucky, which authorizes the obligees to sell lottery tickets for the benefit of a college in that state; it was held that the stipulations of the bond were to be performed in Kentucky, and that, as it was valid by the laws of that State, the Courts of New York would enforce it, not-

withstanding it would be illegal in the State of New York. See also the Avon, 1 Brown's Ad. Rep., 190.

Wayman *vs.* Southard (C. J. Marshall), Connect. 48.

In Wayman *vs.* Southard, 10 Wheaton, 48, Chief J. Marshall declares the law to be as follows: "The principle "is that in every forum a contract is governed by the "law with a view to which it is made."

Lloyd *vs.* Guibert, *supra*, L. R. 1 Queen's B. 120: "It "is necessary to consider by what general law the par- "ties intended that the transaction should be govern- "ed, or rather by what general law it is just to pre- "sume that they have submitted themselves in the "matter."

Phillimore, 4 Int. Law, 469. It is the will of the contracting parties, as the place to the jurisdiction of which they elected to submit themselves

Phillimore, 4 Int. Law, 469, says: "It is always to "be remembered that, in obligations, it is the will of "the contracting parties, and not the law, which fixes "the place of fulfillment—whether that place be fixed "by express words or by tacit implication—*as the place* "*to the jurisdiction of which the contracting parties* "*elected to submit themselves.*" See also Crapo *vs.* Kelley, 16 Wal., 610, 626; Coinage Bank of England *vs.* Netherlands English Steam Nav. Co., (1885) 5 Mar. Law cases 65.

The Scotland, 105 U. S. R., 24, 29, is authority that if a collision should occur in British waters and the injured party should seek relief in our Courts, "we (the U. S. Supreme Court), would administer justice according to the British law, so far as the rights and liabilities of the parties are concerned."

It is to be borne in mind that the case at bar is one of a British vessel stranding on British territory. Shall it be said that it makes a difference in principle whether the vessel strikes British land, or collides with or

strikes a British vessel, and damage to cargo arises? It is to be observed here that the parties themselves have contracted in terms that if the vessel strands, the ship owner shall not be liable for loss, and the law of the place of stranding gives to the ship owner the same immunity.

Again (the Scotland, *supra*, p. 30) this Court remarks: "Some laws, it is true, are necessarily special in their application to domestic ships, such as those relating to forms of ownership, charter party and nationality; and others follow the vessel wherever she goes, as the law of the flag, such as regulate the mutual relation of master and crew, and the power of the master to bind the ship and owners."

It is claimed here by the libellants that by the neglect of the master the ship was lost; but by the law of the case of the Scotland, *supra*, as we have seen, the power of the master to bind the ship is governed by the law of the flag.

But these libellants had their agencies in Great Britain, as did the shippers; the losses were to be paid and adjusted, and were actually adjusted in Great Britain. They should not therefore complain of the British law. See also The Woodland 7 Ben., 110, 14 Blatch., 499; 104 U. S. R., 180.

The position of the respondents, with respect to proof of the law of Great Britain applicable to these cases, is not one to commend itself to the favor of the Court.

1st. They admitted in the District Court, not on the record, but in oral argument and written briefs (Moving papers, p. 7, fol. 20), that the law was as claimed by appellant.

2d. Having lulled the appellant into a feeling of security in this feature of the case, so that it did not deem it necessary to make new allegations on appeal to the Circuit Court, the respondents made the point there for the first time, that this law had not been proved,

and when the appellant sought by amendment and proofs in the Circuit Court to supply the deficiency, Admiralty Rule 4 was invoked and the fact of the existence of such law suppressed. The law of Great Britain was cited and fully commented on in the lower Courts and formed one of the main grounds of the appellant's argument (See Record p. 7, affidavit of Franklin A. Wilcox—" *Writ of Certiorari* and Return.")

3d. Having succeeded in the Circuit Court, they then aimed to prevent a hearing on the question here by entering an order after date of final decree, and omitting to mention therein the denial of what was the main feature of the motion, viz., Leave to prove the said law. These were the grounds of resistance to the issuance of the writ.

It is submitted that no manipulation of dates, nor omission in Order, should be permitted to defeat the appellant's application. The motion was made and decided in the Circuit Court before the entry of final decrees (see opinion of Justice Blatchford, moving papers, p. 16, fol. 47).

The papers which were brought up under the writ of certiorari were expressly mentioned in the petitions of appeal to this Court, and orders were made by the Court allowing the same (Moving papers, p. 4, fol. 10, and Record, p. 69).

The appeal to the Circuit was in effect a new trial, and the appellant should have been deprived of no substantial right on any purely technical ground.

This Court has the power to see that there is no failure of justice on any such ground. It has never been claimed that the libellants have been taken by surprise, or will suffer the least injustice from any laches of the appellant. On the contrary, there can be no question as to what the law of Great Britain, as it has existed for half a century, is. The learned counsel for libellant will not plead ignorance of that law.

No expert need be called to prove the law. In this Court the law of England may be proved by the production of printed books of statutes and reports and by text writers, as well as by sworn testimony of experts. The Pawaschick, 2 Lowell Reps., 142, 148; see page 150, where the Court remarks that when such points arise "*a Court of Admiralty can take measures to obtain instruction.*"

Story Conf. Laws, p. 386, (See foot note,) referring to Picton's case, in which Lord Ellenborough said, "The best writers furnish us with their statements of the law, and that would certainly be good evidence as that which makes histories admissible. There is a case in which the history of the Turkish Empire *** was received by the House of Lords. I will therefore receive any book that purports to be the history of the common law of Spain." Said Lord Campbell (Sussex Peerage case): "The most authentic form of getting at foreign law is to have the book which lays it down." See also Amer Ins. Co. *vs.* Johnson, 1 Blatchf. & H. 1, where Judge Betts refers to the history of Admiralty pleading. See the Maggie Hammond, 9 Wal., 435-452.

The amendement asked for should have been allowed. The greatest liberality is permitted in Admiralty courts in respect to amendments, 2 Conkling's Prac. (2d ed.), 258.

The authority to grant relief is not limited to the District Court, but appertains also to the Circuit and Supreme Courts, on appeal. It is held, moreover, not to be restricted in the Appellate Court to the reformation of the original allegations, but the Court may also allow new allegations. Rule XXIV of the Admiralty rules is as follows: "In all informations and libels in cases of admiralty and maritime jurisdiction amendments in matters of form may be made at any time on motion to the Court as of course. And new counts may

be filed and amendments in matter of substance may be made at any time before the final hearing."

Benedict says (Am. Admiralty, p. 286): "It has always been the practice in American Admiralty Courts to allow every facility to the parties to place fully before the Court their whole case, and enable the Court to administer substantial justice between the parties, without circuity of action, and never to allow a party to overcome his adversary by the man traps and spring guns of covert chicanery, or by the surprises and technicalities of mere pleading or practice."

2 Conkling's Admiralty, p. 212, speaking of pleadings, says: "All mere technicalities are disregarded. * * * Pleadings are always upheld when they can be, and the parties are allowed on easy terms to amend when they cannot be."

In the "Syracuse," 12 Wal., 173, the Court says: "It is objected that the libel does not specifically charge this antecedent negligence as a fault. This is true, and the libel is defective on that account; but in admiralty an omission to state some facts which prove to be material, but which could not have occasioned any surprise to the opposite party, will not be allowed to work any injury to the libellant if the Court can see there was no design on his part in omitting to state them. There is no doctrine of mere technical variance in the Admiralty, and subject to the rule above stated, it is the duty of the Court to extract the real case from the whole record and to decide accordingly." See also the Clement, 2 Curtis, 363; the Penna., 12 Blatch, 68; and cases cited in Jones' Rules Fed. Prac. (N. Y. 1884), p. 191, under Admiralty rule24.

The simple contest on this point is that the Court shall not take cognizance of the British law as bearing on that branch of this case relating to the question of conflict of law ; and we submit that all that is required is that the Supreme Court now take cognizance of the

law by the mere inspection of the printed reports of the Courts of Great Britain. We were deprived of this substantial right on the very technical ground that although we had asked in our appeal to the Circuit that the case be tried anew on new proofs, we had omitted mention of new allegations.

As a matter of precaution we promptly applied for an amendment of the answer, but there is grave question whether any amendment was necessary. We invite the Court's careful attention to Article 11 of the answer (Record, p. 5), which is as follows :

" The respondents further allege * * * that the steamer ' Montana ' was a steamer owned and navigated by them, that the home port of the said steamer was at Liverpool, aforesaid, where she was registered, and where the repondents carried on their business." And there is also an averment in the second Article that respondents were a corporation organized under the laws of Great Britain.

Article 12 of the answer (Record, p. 6) is as follows :

" That the merchandise * * * became lost, etc., by perils of the sea, and causes from which the said respondents were exempt by law and the terms of the said bill of lading."

We submit that inasmuch as the answer averred that the " Montana " was a registered vessel, her home port being at Liverpool, and that averment was followed by the averment that the respondents were exempt *by law* and the bills of lading, the pleading was sufficient in admiralty, and fairly gave the libellants notice that the respondents would rely upon the law of the flag for exemption. That the law was relied upon in the District Court without objection, see affidavit of F. A. Wilcox, in the moving papers on writ of certiorai, p. 7, fol. 20.

If there had been any doubt in the minds of the libellants as to what particular law the respondents meant

by the averment, they should have duly excepted. The "Quickstep," (9 Wall., 665), the "M. M. Caleb" 10 Blatch., 467, 471.

VII.

The decrees below should be reversed.

FRANKLIN A. WILCOX,
Of Counsel for Appellant.

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 56.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED,)

Appellant,

vs.

THE PHŒNIX INSURANCE COMPANY,

Appellee.

No. 57.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY,

Appellant,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA,

Appellee.

SUPPLEMENTAL BRIEF ON BEHALF OF THE APPELLANT.

STEPHEN P. NASH,
Of Counsel.

This brief is also filed on behalf of The Cunard Steamship Co. (Limited), The Inman Line, The Red Star Line and the Anchor Line.

S. P. NASH,
Of Counsel.

EVENING POST JOB PRINT. NEW YORK

Supreme Court of the United States,

Of October Term, 1887.—No. 56.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited),
Appellant,

vs.

THE PHŒNIX INSURANCE COMPANY,
Appellee.

Of October Term, 1887.—No. 57.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY,
Appellant,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA,
Appellee.

BRIEF ON BEHALF OF THE APPELLANT.

STEPHEN P. NASH, *Of Counsel.*

These cases come up on appeal from the Circuit Court for the Eastern District of New York.

They are admiralty causes *in personam*, brought by the

respondents, as libellants, against the appellant, as owner of the steamer *Montana*, to recover for damages and loss to goods shipped on board said steamer.

The libels, which are similar in the two cases, allege that the *Montana*, a steamer owned and navigated by the steamship line, left New York on or about the second day of March, 1880, "with a cargo of merchandise and a large number of passengers * * * * to be landed and delivered in the port of Liverpool; that the *Montana* failed to deliver her cargo, but was during the voyage stranded on the west coast of Great Britain, at or near Clegyr Point, in Holyhead Bay" (*fol.* 3), whereby the cargo was in large measure lost or destroyed, and the remainder damaged; and that said loss was "due to the negligence of those navigating the saids teamer" (*fol.* 4).

The answers put in issue the negligence alleged, and set up that the cargo was shipped by bills of lading exempting the carriers from liability for "barratry of masters or mariners, or damage by stranding or other perils of the seas, *whether arising from the negligence, default or error in judgment of the master, mariners, engineers or others of the crew, or otherwise howsoever*" (*pp.* 8, 9).

The evidence before the District Judge was largely by deposition. He adjudged that the loss was caused, "not by a mere error in judgment on the part of the master of the steamer *Montana*, but by a failure to use reasonable care and skill in the navigation of the ship" (*fol.* 26).

His opinion is at *pp.* 10, 15.

On appeal to the Circuit, the decree was affirmed (Opinion, *pp.* 23, 32). The appellant proposed findings of fact and conclusions of law (*pp.* 34, 39). The findings made by the Court are at *pp.* 40, 45, to which exceptions stated at *pp.* 33—23 were filed.

They raise the questions to be considered by this Court, in respect to which, the following errors are assigned:

(1.) Upon the facts found the loss was due to error in judgment on the part of the master and mariners, not to negligence, as found by the Court below.

(2.) If any negligence on the part of the master or

mariners caused or contributed to the loss, the appellant, under the terms of the bills of lading, is not liable for such loss.

(3.) The contract of carriage was a valid contract between the parties to it, and the appellant is entitled to the benefit of its terms.

(4.) There is no established principle of public policy which prohibits parties making their own bargains as to rates and terms for the transportation of goods upon the high seas when the bargains are fairly made and the business is open to general competition.

(5.) If the exceptions in the bills of lading violated any rule of public policy, the right to invoke such rule was a personal right of the shippers, and did not pass to the underwriters by subrogation.

(6.) The liabilities of the parties to the bills of lading are to be determined by general commercial law as administered in the Admiralty Courts.

(7.) If any law of place is to govern these liabilities it is the law of New York or of England.

(8.) Upon the pleadings, this Court can apply the law which may be determined to be applicable.

(9.) The provisions in those of the bills of lading (*pp.* 10, 24, 54) which entitle the carrier to the benefit of insurance upon the goods therein described, deprive the underwriters of all right of recovery in respect to such goods.

I.—Upon the facts found the loss was due to error in judgment, not to negligence on the part of those navigating the steamer.

The statement of facts found (*pp.* 40, 41), describes the

usual course of vessels on the way from Queenstown to Liverpool, the lights, and fog horns and their location, the tides which prevail in the Channel, and then proceeds: "The *Montana*, on a course about northeast by east, magnetic, passed within a short distance of South Stack light-house and saw the high light there between one and two o'clock in the morning of March 13th" (*fol.* 98). The vessel grounded at 2:45 or 2:50 (*fol.* 100). She was, in fact, out of her course and too near the English coast, and the negligence imputed to the master is that he hadn't found this out. That he was vigilant is conceded. "The Master of the *Montana* was on the bridge and in charge of her navigation" (*fol.* 94). It is found that the officers of the *Montana* expected to see the South Stack light "at a distance of about twenty miles off, bearing from east northeast to northeast by east. When they saw it first they thought it to be fifteen miles off, *and they remained of that opinion.* It passed out of sight, abaft their beam, *they supposing it was hidden by the horizon*" (*fols.* 98–9).

The subsequent navigation was justified by this conviction.

But, in fact, it subsequently turned out that the light was hidden by a fog on the coast. All through the night, until five in the morning, "a fog overspread *the land* surrounding Holyhead Bay, and extended *at times*, and to *some extent*, into the bay and out to sea" (*fol.* 98). It was, perhaps, an hour or more after the South Stack light was seen ("between one and two o'clock," *fol.* 98), before the fog gun on North Stack was heard ("about half-past two," *fol.* 99), when the course was changed, but speed not slackened until some fifteen minutes later, when the engines were put at half speed (*fol.* 99), and shortly afterwards the vessel struck.

It is quite clear that if the vessel had been where the officers supposed she was, when the light was first seen, fifteen miles off shore, the casualty would not have happened.

The negligence imputed is based upon the notion that the officers ought to have distrusted their convictions when they first saw the South Stack light, and verified them by cross bearings and soundings, or stopped when

the fog set in, until they should, "by these means or otherwise, learn where their ship was" (*fol.* 102). This was very easy to say after the event.

The officers were navigators of experience, familiar with the Channel; their positions, as servants of the company, and in their calling, were at stake, possibly their lives, as well as the valuable vessel and cargo in their charge.

It is submitted that the evidence was not sufficient to justify the finding of negligence, with the consequences such a finding involved.

But, in view of the character of the question presented to the mind of a single Judge, unaided by assessors, and which the District Judge said he "approached with solicitude" (*fol.* 20), the question next to be considered may be thus shaped:

The owner of a valuable steamer, thoroughly equipped and seaworthy in every particular, about to start on a voyage from New York to Liverpool, is offered a valuable cargo at a low rate of freight. He says: I will take it at the rate, but will not be liable for damages caused by negligence with which my officers and crew may be chargeable. Not that I expect them to be negligent; they are bound to vigilance by every consideration; but ocean passages are full of peril, and the most careful may be lulled into a careless confidence. In case of disaster, negligence is at once imputed. I am liable to be cited into various courts; some where juries decide questions of negligence, others where a single Judge, who, perhaps, has never been to sea, will decide. The facts may be obscure, the witnesses scattered, &c. I will not take the risk for the rate of freight you offer. You are at liberty to go elsewhere, or to have the risk I decline to take insured."

The shipper accepts a bill of lading with this risk excluded, the loss occurs, and the underwriter who has received a premium for taking the risk being subrogated to the shipper claims that the exemption being contrary to public policy is unavailing.

This claim of the underwriter, sustained in the District and Circuit Courts, the appellant assigns for error.

II.—The exceptions in the bill of lading, inserted to relieve the owners of the steamer from liability for the negligence of the master or mariners, were valid and effectual.

(1.) The point now raised is not controlled by decisions of this Court. The two which bear most directly on the question are *Railroad Co.* v. *Lockwood*, 17 *Wall.*, 357, and *Hart* v. *Penn. R. R. Co.*, 112 *U. S.*, 331.

These cases both differ from the case at bar in the fact (whatever may be its significance) that the carriers were inland carriers, railroad companies exercising their functions under public authority.

They differ from each other in the fact that in the earliest, a stipulation in the contract of carriage for an exemption from liability for negligence was held void; in the other, such a stipulation was held valid.

The two cases appear to be reconcilable by the view stated in both, that the validity of the exemption turns in every case upon the fact whether it is or is not in the case presented to the Court, "just and reasonable."

In *Railroad Co.* v. *Lockwood*, the action was for personal injuries to a passenger, which were found by the jury to have been caused by the negligence of the Railroad Company whose defense was that by the terms of the contract it was exempt from liability. The opinion states the question thus: "The question is, therefore, distinctly raised, whether a railroad company carrying passengers for hire can lawfully stipulate not to be answerable for their own or their servants' negligence in reference to such carriage." The question, thus stated with precision, was the question involved, and though, in the discussion of it the argument took a wide range. it is submitted that the question thus stated was the only one decided.

There were, indeed, at the close of the elaborate opinion several conclusions stated which went beyond the point directly involved, but it has been so often held in this court that nothing is adjudged by a decision but what is presented by the case, that it is assumed that the Court is free to qualify some of these conclusions.

The second of these conclusions, which is the one which is claimed to cover the case at bar: "That it is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants," cannot certainly be reconciled with the *Hart* case without some qualification of its language, for in this latter case an exemption from liability for negligence was held just and reasonable, and therefore valid. To be sure it was not an exemption from all liability, but it was a substantial and important exemption from liability sustained as lawful because, under the circumstances, just and reasonable. To harmonize the two cases, then, the above second proposition should read thus: "That it is not just and reasonable, in the eye of the law, for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants, *where the exemption is not in itself just and reasonable.*" And this is substantially the decision in the *Hart* case, that the exemption, being in a contract fairly made, &c., was a *proper and lawful* mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives," &c. (*p.* 343). And in another place, the opinion, after referring to numerous variant decisions, proceeds thus: "Applying to the case in hand the proper test to be applied to *every limitation* of the common law liability of a carrier—*its just and reasonable character*—we have reached the result indicated," which was that the exemption from partial liability for negligence might in that case stand, and then adds: "In Great Britain, a statute directs this test to be applied by the Courts. *The same rule* is the proper one to be applied in this country, in the absence of any statute" (p. 342).

In the third conclusion stated in *Railroad Co.* v. *Lockwood*: "That these rules apply both to carriers of goods and carriers of passengers for hire, *and with special force to the latter*," it seems to be implied that it was the latter case only which was before the Court, and that what was said as to carriers of goods might be considered as said *arguendo.*

And some color is given to this view by the language of

the same learned judge in the case of *Railway Co.* v. *Stevens*, 95 *U. S.*, 655, which was also a case of injury to a passenger. After referring to the case of *Railroad Co.* v. *Lockwood*, the judge says: "We have no doubt of the correctness of the conclusion reached in that case"; he does not say "all the conclusions," and then proceeds as follows: "We are aware that respectable tribunals have asserted the right to stipulate for exemption in such a case; and it is often asked, with apparent confidence, 'May not men make their own contracts, or, in other words, may not a man do what he will with his own.' The question at first sight seems a simple one. But there is a question lying behind that, 'Can a man call that absolutely his own which he holds as a great public trust, by the public grant and for the public use, as well as his own profit?' The business of the common carrier, in this country at least, is emphatically a branch of the public service, and the conditions on which that public service shall be performed by private enterprise are not yet entirely settled. We deem it the safest plan not to anticipate questions until they fairly arise and become necessary for our decision" (*p.* 660).

It is submitted that *inland carriers* were here in mind, and that the question now presented had not then arisen.

None of the cases in this Court which have arisen in reference to exemptions in contracts for *ocean* navigation of cargo need be specially considered, as none of them go further than to hold, to use the language of Rapallo, *J.*, in a late case, that "when special perils are excepted, such as losses by fire, the exception is held not to cover the case of a fire caused by the negligence of the servants of the carrier, unless the intention to cover such a case affirmatively appears" (*Spinetti* v. *Atlas Co.*, 80 *N. Y.*, 71, 75).

The remark of GRAY, *J.*, in *Phœnix Ins. Co.* v. *Erie Transp. Co.*, 117 *U. S.*, 312, may also be cited: "By the settled doctrine of this Court, even an express stipulation in the contract of carriage that a common carrier shall be exempt from liability for losses caused by himself and his servants, is unreasonable and contrary to public policy and therefore void," (*p.* 322).

The remark was not necessary to the decision. The bill of lading in that case contained no such exemption from liability for negligence.

The authority of the *Hart* case, which the learned judge did not refer to, he did not, of course, intend to impugn.

III.—The stipulations for exemption from liability in these cases were "just and reasonable."

This is a question to be decided indeed by the Court, but in deciding it all the elements which fairly affect the contract will be considered.

(1.) The contract was for ocean carriage between an American and an English port.

Without, now, contending that the law applicable to ocean transportation is different from that applicable to inland carriage, the circumstances to be taken into account in determining whether the claimed exemption is "just and reasonable" are very different.

Under bills of lading, without restriction of liability, the ocean carrier is said to be an insurer against all losses, except those caused by the act of God or public enemies. Yet it is settled that he may limit this insurance risk, and, in fact, the shipper does by marine insurance transfer the risk, either wholly or partially, to his underwriters.

In the present case, the losses are all found to have been caused by stranding. "The said wheat was in part lost, and the remainder thereof damaged by the *stranding* of the *Montana*" (*p.* 21, *fol.* 41); and the same language is used in respect to all the various species of cargo (*pp.* 21–22).

A loss by stranding is a sea peril, and though the stranding may be due to negligence as a *causa causans*, the underwriter is liable.

Gen. Mut. Ins. Co. v. *Sherwood*, 14 *How.*, 351.

Phœnix Ins. Co. v. *Erie Transp. Co.*, 117 *U. S.*, 312.

In the present case, in fact, the underwriters insured against "barratry of the master and mariners and all other perils," &c. (*p.* 47), and in the libel they allege that they "had paid or were liable to pay" the several losses for which they sued (*p.* 3, *fol.* 5).

It is not "just and reasonable" then, to hold that an exemption from the risk on the part of the carrier which a shipper agrees to, and then covers the risk by insurance, shall be invalidated merely to enable the underwriter, who has agreed to bear the risk, and has received a premium for so doing, to shift the loss to the carrier, who refused to insure and received no premium.

(2.) The peculiar perils of ocean navigation, the difficulty of securing sailors having all the qualities requisite for large responsibilities, the impossibility of constant supervision make it "just and reasonable" for an owner to propose and insist upon limitations of his liability and exemptions, if fairly agreed upon, from risks that he refuses to assume should be permitted to him.

(3.) There is such a concurrence of authority sustaining the validity of these exemptions in contracts for the carriage of goods, that a contrary rule declared by this Court, especially if applied to ocean transportation, would inevitably lead to confusion.

In *Carr* v. *Lancashire, &c., Railway Co.*, 7 *Exch.*, 707 (1852); *Austin* v. *Manchester, &c., Co.*, 10 *C. B.*, 454 (1850); *Morville* v. *Great Northern, &c., Co.* 16 *Jur.*, 528; 10 *E. L. & Eq.* (Boston), 366 (1852), *and Walker* v. *York, &c., Co.*, 2 *El. & Bl.*, 750 (1853), the three common law courts of England concurred in sustaining the validity of such contracts.

Then came the Act of 1854 regulating such contracts when made by *railroad companies.* Under this act similar exemptions have been sustained when the companies have followed the provisions of the act as to the formalities of the contract, &c. See the latest case under this statute—*Great Western Railway Co.* v. *McCarthy, Law Rep.*, 12 *App. Cas.*, 218 (1887).

It is believed that in no case in England has the carrier

been deprived of the protection of a clause in his bill of lading exempting him from liability for the negligence of his servants, if he obeyed the requirements of the act in respect to the formalities of the contract.

And it is a significant fact, as bearing upon the question of public policy, that while regulating the powers of railway companies to make special terms for carriage, Parliament has not interfered with the freedom of contract in matters of ocean transportation.

The cases of *Penin. and Or. St. Nav. Co.* vs. *Shand*, 3 *Moo. P. C. C.* (N. S.), 272 (1865); *The Duero*, *L. R.* 2 *Ad. & Ec.*, 396 (1867–8), and *Taubman* v. *Pac. St. Nav. Co.*, 1 *Asp. Mar. Cases*, 336, 26 *L. T. N. S.*, 704 (1872); *Chartered Bank &c.*, vs. *Netherland*, *&c.*, *Co.*, *L. R.*, 10 *Q. B. Div.*, 521 (1883), are cases in respect to ocean transportation in which the validity of such exemptions was sustained. And see *Carver on Carriage by Sea*, 107, 8.

Taylor v. *Liv. & Great W. St. Co.*, *L. R.*, 9 *Q. B.*, 546 (1874), was a case where the present appellant, as owner of the *Nevada*, was sued in the Queens Bench for the loss of jewels supposed to have been stolen by the purser on the voyage from Liverpool to New York. The bill of lading exempted from liability for barratry of master and mariners, theft, &c. The defendants were held liable because the words of exemption as construed by the Court did not cover the case, but it was not hinted by counsel or by either of the judges that the exemptions were invalid.

In *Spinetti* v. *Atlas Steamship Co.*, 80 *N. Y.*, 71, a similar clause in the bill of lading was held to exempt the Steamship Company for liability for a loss caused by theft of the purser.

The authorities for a similar rule in Germany, France, Italy and Holland, between all which countries and the United States there is a constant interchange of commodities by ocean transportation, are stated fully in Mr. WILCOX's Brief, *pp.* 47–78.

IV.—While regard for the safety of human life is a full justification for the rule of public policy declared in Railway Co. *v.* Lockwood in respect to contracts for the carriage of passengers, the policy of interfering with the liberty of contract where only loss to goods is involved is not apparent.

(1.) Shippers may, indeed, if ocean carriers are not allowed to refuse to insure, be saved the expense of insuring with marine underwriters. But public policy does not require the favoring of one department of business at the expense of another.

(2.) Low rates of freight would not be secured, if that is a measure of public policy which the courts desire to enforce. Rates of freight would naturally be highest where the risks are greatest.

(3.) The ship owner has already so many much stronger inducements to care and vigilance, that the additional one of his liability for loss of cargo can hardly be said to count. His ship is at peril, the credit and success of his line, the safety of the lives of all on board. It is hardly to be imagined that those charged with the navigation of the *Montana* on the night af the 12th–13th, March, 1880, were influenced to relax their vigilance by any thought that if they all went down the owners would not be responstble for the cargo.

Care for human life was what led to the decision in Railway Co. *v.* Lockwood. The same feeling leads the Courts to stand guard where the life of a prisoner is in danger from irregular action in the Courts, and to hold, as was held in *Cancemi* v. *The People*, 18 N. Y. Rep., 128 137, that such a person cannot even waive a privilege that the law gives him. In that case a trial by eleven jurors was held illegal, though expressly consented to by the prisoner. But in cases like those at bar, the only question at stake is a conflicting pecuniary interest between carriers and underwriters, and the Courts ought to leave them to the ordinary obligations of parties competent to bind themselves by contract.

(4.) The decisions under the limited liability act, clearly show that in respect to ocean navigation there is no public policy which precludes an owner from protecting himself from liability for the negligence of master and mariners.

In *Walker* v. *Transp. Co.*, 3 *Wall.*, 148, it was held that the owner was not under the act liable for a loss by fire caused by the negligence of agents, in which he had not participated. To the same effect is the case of the *City of Norwich*, 13 *Wall.*, 104, and in the discussion in the same case of the mode of measuring the extent of that liability, BRADLEY, *J.*, defends with great force the sound policy of the rule which allows the ship owner to protect himself by insurance against losses by the negligence of his servants (118 *U. S.*, 468, 495, 504–5).

V.—If there was any invalidity in the contracts expressed by the bills of lading, the right to avail of it was personal to the shippers, and did not pass to the underwriters.

The soundness of this position depends upon the nature of the public policy which is to be protected by adjudging the exemptions invalid. The British act of 1854 appears to be based upon the idea of protecting the shipper against the duress of railroad companies in forcing upon him unreasonable contracts. He must himself sign the contract, or he is not bound; a mere notice to him is not sufficient, and he must receive a just and reasonable equivalent for the reduced risk. Privileges like these, where there is freedom of contract, parties, who are *sui juris*, can waive. *Quilibet potest renunciare juri pro se introducto.*

Certainly, the policy supposed to be violated by these exemptions does not imply any turpitude in the exemptions. If so, the Court should aid neither party. (*Trist* v. *Child*, 21 *Wall.*, 441.) In the present case the shipper, so far as appears, accepted the terms of the bill of lading without objection; if the goods had been safely carried, he would have congratulated himself upon his low rate of

freight without care for the public interests which he had been a party to betraying; after hearing of the disaster he made no protest against the agreement he had made, took his money, as he had a right to do, from the underwriters, and left it to them to reimburse themselves by repudiating the terms of the contract and invoking the public weal.

The transfer by way of subrogation, however, seems to have been confined to "rights and remedies under the bill of lading" (*p.* 57).

VI.—If any law of place governs, it is the law of New York, where the contracts were entered into, or of England, in whose waters the disaster occurred, and where the transportation was to be completed. It must be conceded that under the law, as administered in either of those jurisdictions, the libels should have been dismissed.

Upon this point, and also upon the question whether the District and Circuit Courts could have taken notice of the law of England, and whether this Court can do so, without proof of it by experts, reference is made to the brief filed by Mr. MORTON P. HENRY.

And that it was not necessary to specially plead that the transaction was governed by the law of England, or some other law than that of New York, seems expressly decided in *Lamar* v. *Micou*, 112 *U. S.*, 452.

In that case this Court reversed a decree in equity upon the ground that the law of another State than that of New York governed the case though that ground was neither *pleaded* nor raised by counsel either below or on appeal. On motion for a rehearing on this ground, the Court said: "The questions so passed upon, though hardly touched by either counsel at the first argument, were vital to the determination of the rights of the parties and *could not be overlooked* by the Court" (*Lamar* v. *Micou*, 114 *U. S.*, *Rep.* 218, 220). In the present case the facts upon which the point of the *lex loci* is raised are indisputable.

VII.—If, as is ably urged by some of the briefs, there is a maritime law on the subject variant from the common law, then the matter being one of contract between shipper and carrier to be performed on the high seas, the admiralty courts, at least, should interpret the obligations and validity of the contract by that law; but it is difficult to see how, if the maritime law does so effect the obligations and validity of the contract, any Court should refuse to recognize it. It would not be to the praise of the law as a rational department of affairs that the rights of parties under a contract, the terms of which are explicit, should be determined one way in a suit brought in admiralty, and the other way in a suit brought on the common law side of the same tribunal.

Congress not having legislated, there is, it is submitted, no law of the United States on the subject. The Federal courts are supposed to administer the common law or the general commercial law, as the Courts of England, and of each of the States having jurisdiction, would administer it, all in the same way, if they were all infallible.

VIII.—In several of the bills of lading (see the substance of them as stated by BLATCHFORD, *J.*, in his opinion, *pp.* 24-27, and the full forms of two, between *pp.* 54 and 55), there is a provision that the carrier "shall have the full benefit of any insurance that may have been effected upon, or on account of said goods." This provision, according to the decision in *Phœnix Ins. Co.* v. *Erie, &c., Trans. Co.*, 117 *U. S.*, 312 defeated the right of the libellants below to recover in respect to the property covered by such bills of lading; but it was held in the circuit that these provisions applied "only to the transportation to New York, and not to the Ocean transit" (*p.* 28, *fols.* 61, 2).

This was duly excepted to (Requests, *p.* 36, *fol.* 85; *p.* 39, *fol.* 90. Fourth Exception, *p.* 64, *fol.* 122).

This construction of the bills of lading, it is submitted,

was erroneous. The bills of lading containing these provisions were *through bills*, covering the transit from the inland place of delivery by rail to New York, thence by the appellant's line to Liverpool, and they were executed by "The agent signing for the said railroad and steamship companies."

The insurance was also a through insurance (*p.* 61).

In such cases the last carrier on the route, as well as the intermediate carriers, is entitled to the terms of the contract made on receipt of the goods (*Maghee* v. *The Camden and Amboy R. R. Co.* 45 *N. Y.*, 514).

IX.—The cases of *Hart* v. *The Penn. Co.*, 112 *U. S.*, 342, and *Phœnix Ins. Co.* v. *Erie and W. Transp. Co.*, 117 *U. S.*, 312, require the reversal of these decrees. The first holds that a railroad company may, in a contract for the carriage of horses, limit its liability for the negligence of its servants to a portion of the loss, a half, third or tenth part, in that case to about 6 per cent. of the value of the goods. But if so, then clearly it may for the entire loss.

In the other case it was decided that it was not against public policy for the carrier to cover by insurance losses due to the negligence of his master and crew.

Whatever else may have been said *arguendo* in the opinions of the Judges in these cases, the points decided have cleared away a great deal of uncertainty, and have established that a common carrier of goods is not obliged to take the risk of the negligence of his servants, and himself insure against it, but may insure that risk with those who take insurance risks, or require, as a condition of taking cargo, that the shipper, if he wants to cover that risk, shall himself do so in the same way.

X.—The decrees appealed from should be reversed.

S. P. Nash,
Of Counsel for Appellants.

IN THE

Supreme Court of the United States.

Of October Term, 1887, No. 56,

The Liverpool & Great Western Steam Company (Limited),

APPELLANT,

vs.

The Phœnix Insurance Company.

Of October Term, 1887, No. 57,

The Liverpool & Great Western Steam Company (Limited),

APPELLANT,

vs.

The Insurance Company of North America.

ADDITIONAL BRIEF ON BEHALF OF THE APPELLANT,

Filed by leave of Court.

MORTON P. HENRY.

Dando Print. and Pub. Co., 34 S. Third St.

IN THE

Supreme Court of the United States.

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THE LIVERPOOL & GREAT WESTERN STEAM COMPANY, (LIMITED), APPELLANT,

vs.

THE PHŒNIX INSURANCE COMPANY.

Of October Term, 1887, No. 57,

THE LIVERPOOL & GREAT WESTERN STEAM COMPANY, (LIMITED), APPELLANT,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA.

Additional brief filed by leave of the court to sustain the position that the validity of the contracts in the bills of lading for shipments by the British steamer Montana was governed by the law of Great Britain, and that the proper law can be ascertained and applied on the facts, as found in the cases presented by the appeals in these causes.

Three questions are raised by the appeals in each of these cases on this subject:

First. Whether the liability of the respondents under the contracts in the bills of lading for shipments by the Montana is governed by the law of the United States or that of England?

Secondly. Whether the Admiralty Courts of the United States will ascertain what the law of England is, in cases to which the law of that country applies, without proof of such law by experts?

Thirdly. And whether on the pleadings and facts the law of Great Britain can be considered in this court?

The case presented is that of a contract for transportation on the ocean from New York to Liverpool, in a British vessel. The contract was evidenced by bills of lading accepted by the shippers, each of which contains in substance an exception of liability in the ocean transit for accident of the seas, rivers and steam navigation of whatsoever nature or kind, whether "occasioned from or by the negligence, default or error in judgment of the master, mariners, engineers or others of the crew or of any of the servants or employees of the ship owners." The contracts were made in New York, Buffalo and Nashville, and so far as the land transit is concerned, are governed by the law of the United States; but when the merchandize was shipped on a British vessel, to be conveyed by sea from New York to Liverpool, the important question arises, Whether an agreement by the shipper, to exempt the shipowner from liability, which the law of the vessel's nation permits, will be recognized as the law governing the contract, or whether it is governed by the law of the place where the contract was made?

See Carver on Carriage by Sea, page 212.

The answers allege that the respondent is a

British corporation, organized and existing by virtue of the laws of Great Britain and Ireland, for the purposes of owning and navigating steamers, and that the steamer Montana was a steamer owned and navigated by it; that the home port of the said steamer was at Liverpool, aforesaid, where she was registered, and where the respondent carried on its business. Although it contains no formal allegation that the contracts and liability of the owners of such a vessel were governed by the law of Great Britain, the question was raised, on the trial in the District Court, and decided, as if such an allegation had been made. No exception was taken that the court could not consider it under the pleadings. The decision is in these words:

"Next, it is said in behalf of the defendants, that "their liability upon these bills of lading must be "determined by the law of England; but the undis- "puted facts show that there is no ground for such a "contention."

Opinion of Judge Benedict, Record No. 56, page 9, and No. 57, page 11.

The question of the want of a proper allegation had been tacitly waived on the trial in the District Court. It was raised for the first time in the Circuit Court, and there the amendment was refused. If the facts showed that the question arose, and the court was competent to ascertain the law without formal proofs, it is respectfully urged that the court should have relieved the defendant by allowing the amendment to be made, and that this court is competent to allow the same amend-

ments refused by the Circuit Court to be made in the course of the trial of these appeals, if, in its judgment, the cause ought on the merits to have been decided under the law of Great Britain.

The finding of facts in the Circuit Court, show that The Montana was a British vessel owned by a British corporation; that the shipment was made at New York, but the contract of transportation was to be performed upon the high seas, and was to terminate by a delivery in Liverpool; and that the actual loss occurred on the English coast, substantially within the limits of English jurisdiction.

The question, What law governed the contracts? was not considered in the trial in the Circuit Court, because the Circuit Court *held* that as the answers admitted the jurisdiction of the District Court, and did not set up that the law of Great Britain applied to the case, and that law if different from that of the forum was not proved as a fact, and there was nothing in these contracts of affreightment to indicate any contracting in view of any other law than the recognized law of the forum, the case must be decided according to the rule of the Federal Courts as a question of general commercial law; and a motion in the Circuit Court to amend the answer so as to set up as a ground of defence that the law of Great Britain enabled ship owners to exempt themselves by express contract from liability for loss arising from negligence, was denied under the rules of the Circuit Court regulating appeals, on the ground that the written appeal had not stated that

it was intended on the appeal to make new allegations.

(Return to writ of *certiorari*, pages 11–14).

It is respectfully urged that the question sought to be raised by this amendment to the answer arose before the court on the findings of facts, and that an omission of a formal allegation in the answer that the law of Great Britain applied to the case was capable of being supplied in any stage of the cause, and that the law of Great Britain applicable to the case was provable by reference to the reports of the judgments of the English courts in similar cases and the text books of writers of authority, and could be judicially ascertained in that manner in a court of admiralty without proof by the testimony of experts. And that the court should not have suffered the cause to be decided on the law of the forum, if the law of Great Britain relieved the respondents of liability under the contracts in the bills of lading, and the parties intended to contract with reference to the law of the vessel's nation.

First. The respondent did not seek the forum. The suit was commenced by process of attachment issued against the property of non-residents found within the district, according to the procedure in causes of admiralty jurisdiction to compel an appearance in that court. This process is sustained in Atkins *vs.* The Disintegrating Company, 18 Wall, 272. The respondents did not submit to be tried in that forum. The cause was within the admiralty and maritime jurisdiction of that court, and was

triable by any court which could obtain jurisdiction by service of process. Dennick *vs.* The Railroad Co., 103 U. S., 11. The court could not refuse to take jurisdiction because one of the parties was a foreigner. It is only in exceptional cases where both parties are foreigners that jurisdiction is declined. The Belgenland, 114 U. S., 355. A plea to the jurisdiction would have been unavailing. The respondents were sued in a court of the United States by process, which compelled them to appear and defend, and cannot be presumed to have submitted their cause to be adjudicated by the law of the forum, unless such law necessarily governed the case presented.

There is an essential difference between this case and that of a suitor who seeks another jurisdiction; in which case, the suitor submits to be governed by the law of the forum, and the remedies given by that law. The Amalia Br. & Lush., 151. The Scotland, 105 U. S., 124. No rights were waived by appearing in the cause; nor can the respondents be considered as voluntarily submitting to be judged by the law of the forum.

II. Is there anything in the methods of procedure and trial of causes in the Admiralty Courts of the United States which, in a suit against English subjects, forbid such courts in a proper case from deciding the cause in accordance with the law of Great Britain, although the pleadings do not allege that the liability of the respondents is governed by that law, if the facts show that the question is presented for the decision of the court?

The proposed amendment to the answer, alleged that the respondents were relieved from liability for the negligence of their servants, under these contracts by the law of Great Britain. It was an application to the court, before final decree, to decide that the law of the forum did not apply to the case presented by the finding of facts.

It is believed that under the decisions of this court, the absence of any such allegation as to the law applicable to these contracts, would not prevent the court from deciding the cause under the foreign law upon the original pleadings, even without amendment, if the facts presented had shown that it was a proper case to apply such law.

And that where justice requires it, this court will give a proper decree upon the facts appearing in the cause, although the allegations may not be supported, and the relief granted differs from that which is asked in the prayer of the libel.

In the case of Dupont *vs.* Vance, 19 How., 162, a suit was brought to recover the value of cargo which had been jettisoned. It was an action for non-delivery of cargo. It was claimed that the evidence showed that the vessel was unseaworthy. The Circuit Court on appeal from the District Court dismissed the libel, holding that it was a case for contribution by action at law or in equity. The Supreme Court reversed the decree of the Circuit Court, and entered a decree awarding to the libellant their contributory proportion, payable by the vessel in general average. There was no amendment of the libel. But as it appeared by the evidence in the cause that it was a

case for general average contribution, such relief was given although not specially asked.

In the case of The Syracuse, 12 Wall, 167, it was decided that there is no doctrine of a mere technical variance in the admiralty, and when the allegations of specific negligence are not supported, the court will decide on such facts as are presented by the evidence, when the omission to state material facts did not occasion surprise and was not intentional.

The case of The Virgin, 8 Peters, 538, was a suit on a bottomry bond. The Circuit Court held the bond to be invalid for want of authority to execute it, and gave a decree *in personam* for the amount of the advances to the master included in the bond.

These cases illustrate the flexibility of the admiralty procedure to give redress where the facts are fairly before the court, without regard to the allegations where no disadvantage has arisen to the other side from any omission of the allegations or pleadings.

The power of amendment is ample in each court in which the case is heard, at every stage of the proceedings, to permit such an amendment to be made. This arises from the nature of the admiralty appeal which is a trial *de novo*. The Lucille, 19 Wall, 73.

It may be fairly urged, that no rules of court can limit the right of appeal in admiralty given by statute, so as to confine the appellant to the facts as alleged in the court below, and change the nature of an appeal. In the Circuit Court on appeal, amendments can be made at any stage of the proceedings, of which an instance may be given in The

Pennsylvania, 12 Blatchford, 67, where an amendment was allowed permitting the claimant to claim affirmative damages, which had not been set up in the answer after a mandate from the Supreme Court reversing the decree of the Circuit Court dismissing the libel; and dividing the damages. As there would have been a failure of justice to refuse it, the amendment was allowed.

And the Supreme Court may, in the exercise of its appellate jurisdiction, remand the cause to the Circuit Court to allow new allegations to be made where merits plainly appear, but the case is defective on the pleadings. The Marianna, 11 Wheaton, at page 38; The Mary Ann, 8 Wheat., 380; see also The Adeline, 9 Cr., at page 284.

In the case of The Julia Blake, 107 U. S., 418, the action was on a bottomry bond, which was not sustained as to the cargo for want of communication with the owners. After hearing in the Supreme Court the libellant asked to be allowed to recover for the cargo's proportion of actual advances; but, as there was evidence to show that the loss was occasioned by the unseaworthiness of the vessel, this court refused to remand the cause so as to allow such claim to be set up. It was refused because the evidence did not show merits.

If, therefore, the amendment in this cause should have been allowed to bring the question before the Circuit Court of the United States, this court, in the exercise of its appellate jurisdiction, is competent to allow it now, if in the judgment of the court the facts present a proper case to raise the question.

III. On the facts found, what law governed the liability of the ship owners under these bills of lading? Was it the law of the place of contract, or rather of the forum? (For the law of the State of New York would have sustained this limitation of liability of the shipowner as to the contracts made in that State;) or was it the law of Great Britain, to which the vessel belonged, and where the voyage ended?

The weight of authority is that on a contract of transportation made in one country and terminating in another, where the contract is not substantially performed within the place where the contract was made, the law of the latter place does not necessarily govern the liability of the carrier.

In carriage by sea "the power of a master to "bind his owners personally is but a branch of the "general law of agency; and where the master of "a ship contracts as such in a foreign port to carry "goods for a foreigner, his authority to bind his "owners is that conferred by the law of the country "to which the ship belongs; and the flag of the "ship is notice to all the world that his implied "authority is limited by the law of that flag."

Abbott on Shipping, (12 Ed.) page 256. Carver on Carriage by Sea, §206, page 207. See also Story's Conflict of Laws (8 Ed.) §286, b.

Judge Story pointed out in Pope *vs.* Nickerson 3, Story, at page 484–85, that the place where the contract was made was not the most important consideration in determining what law governed the liability of a vessel owner. It arose under a contract

made in Malaga for a shipment to Philadelphia by a vessel owned in Massachusetts. He applied a rule similar to that of the law of the flag to the determination of the liability of the owner, and *held* that it was governed by the law of Massachusetts, where the owner was domiciled. Similar decisions have been rendered in the English Courts, Lloyd *vs.* Guibert, L. R., 1 Q. B., 115. The Gaetano & Maria, L. R., 7 Prob. Div., 137; and by Dr. Lushington in the case of The Bahia, Brown & Lush., 292, who held that parties dealing with masters of foreign vessels, where the contract of affreightment is silent, have submitted themselves, as to sea damage and its incidents, to the law of the nation to which the vessel belongs.

In Lloyd *vs.* Guibert, L. R., 1 Q. B., 115, at page 127, Willes J., gives very pertinent reasons why it would be impossible to apply any other rule to this question. He points out that bills of lading are issued at the port of loading, while the charter party, which is the contract of affreightment under which they issue, is made elsewhere, "and it seems "strange and unlikely to have been within the con- "templation of the parties that their rights or liabili- "ties in respect of the identical voyage should vary, "first, according as the vessel was taken up at the "port of loading or not; and secondly, if she were "taken up elsewhere, according to the law of the "place where the charter party was made, or even "ratified."

Another illustration of this being the only practical rule, is made by the same Judge in the course

of his opinion. A ship visits many ports of different nations in the course of one voyage. She undoubtedly retains the criminal law of her country. Does she put in a new sort of civil liability at each new country she visits in respect of cargo there taken on board?

"An English steamer, for instance, starts from "Southampton for Gibraltar calling at Vigo, Lisbon "and Cadiz. A Portugese going in her from "Southampton to Vigo, would naturally expect to "sail subject in all respects to English law—that "being the law of the place, and the ship. But if "the locality of the contract is to govern throughout, "an Englishman going from Vigo to Lisbon on the "same voyage would be under English law as to "crimes and all obligations not connected with the "contract of carriage, but under Spanish law as to "the contract of carriage; and a Spaniard going "from Lisbon to Cadiz, during the same voyage, "would enjoy Portugese law as to his carriage, and "be subject to English law in other respects." This illustration is used to show "the inconvenience and "even absurdities which would follow from adopting "the law of the place of contract in preference to "that of the vessel."

In the case of The Bahia, Brown & Lush., 292, Dr. Lushington adopts the same view. A bill of lading was signed at New York for a shipment by a French vessel deliverable at Dunkirk in France. The vessel suffered sea damage, and put into Ramsgate, in England. And the question was as to the right of the master to detain the cargo until

it could be ascertained whether the vessel could go forward with the cargo? It was decided that the case was governed by the law of France to which the vessel belonged. He uses this language: "The "Bahia, being a French vessel, I incline to consider "that so far from inserting by implication into this "bill of lading, any agreement to accept the law of "New York, as to the neutral rights of masters and "consignees of cargo as to transhipment—the "master had no authority to bind the shipowner to "accept the law of New York, and that the shipper "must be taken to have known beforehand that if "circumstances like the present should arise, the "dispute would have to be settled by French "law."

In the Gaetano & Maria, L. R., 7 P. D., 137, a bottomry bond given by the master of an Italian vessel in a foreign port was enforced in the English admiralty as against the cargo of a British owner, although by the law of Great Britain it was invalid for want of communication by the master with the owners.

The case of The Woodland, 14 Blatch., 499, was a case of supplies to an English vessel which had put in to the Danish port of St. Thomas in a voyage from Montevideo to New York. The master drew a draft on the owners for the amount "recoverable against the vessel, freight, and cargo."

Upon the facts as found a lien would have arisen under the law of the United States. The Circuit Court decided that under the law of England, it was essential to the validity of hypothecation—that the sea

risk should be incurred by the lender, and refused to enforce the lien.

The Circuit Court says: "It seems to be settled that the question is to be determined by the law of the country of which the master was a citizen, and under whose flag the vessel sailed, and not by the law of the port where the supplies were furnished or of the country where the lien is sought to be enforced." The case was affirmed on Appeal 104, U. S., page 180, but this point was not touched.

It is undoubtedly difficult to reconcile all the cases. The question is always what law did the parties intend to govern their relations to each other? As in the case of the P. and O. *vs.* Shand 3, Moo. P. C., (N. S.), 272, where an English company made a contract to carry a passenger and his luggage, an Englishman from Southampton, in one of their vessels to Alexandria, across the Isthmus of Suez by rail and by another of their ships to Mauritius. It was *held* in that case, that presumably, the intention of the parties was to select the English law to govern, and not the place of performance. The contract was to be performed partly by sea and by land in another jurisdiction. See, also, Cohen *vs.* S. E. R. R., 2 Ex. Div., 253. Brown *vs.* The Camden and Atlantic Railroad, 83 Pa. St., 316, was the case of a passenger who bought his ticket at the office of the company at the ferry in Philadelphia, to go by a railroad in New Jersey from Camden to Atlantic City. The liability of the carrier was *held* to be governed by the law of New Jersey and not by the law of Pennsylvania. The place of injury was in New Jersey.

But on a voyage from New York to Liverpool a vessel performs its contract of affreightment as far as actual locality is concerned upon neutral ground—a common highway of nations. It is generally conceded by writers that when at sea the ship is to be treated as a part of the territory of the nation to which she belongs. A crime at sea committed on board of a vessel is punishable therefore under the laws of that nation for that reason. It is difficult to draw a distinction between crimes and civil rights as affected by locality. A passenger going on board an English ship at the port of New York would presumably intend to subject himself to English law governing his habitancy of the vessel, and the obligation of the ship owners to himself and his luggage, and it is difficult to see why the same presumption does not apply to an affreightor as to his goods entrusted to an English ship. The performance of a contract to carry goods to England in an English vessel is substantially a performance within the jurisdiction of the English law.

The question whether the foreign law governed these contracts, is not a question of remedy but of right. The English law permits a shipowner to limit his liability for the negligence of his servants. If the shipper contracts for carriage under the law of England, an American court could not undertake to override the English law and substitute its own in a contract under such circumstances. Dr. Wharton in his work on the Conflict of Laws adopts the rule in Lloyd *vs.* Guibert, "Where the contract of affreightment does not provide otherwise, the law

of the country to which the ship belongs must be considered to be that in respect to sea damage and its incidents, to which the parties submitted themselves." Wharton's Conflict of Laws, §356.

The subject governing contracts of affreightment is also fully discussed in Foote's Private International Jurisprudence, pages 313–326. He adopts the principle of Lloyd *vs.* Guibert. He says: "The "intention of the parties is the crucial test, and in "contracts of affreightment for example it has been "decided that the intention of the parties is to sub- "mit themselves to the law of the ship's flag, so far "at least as sea damage and its incidents are con- "cerned." After citing at length the judgment of Mr. Justice Willes in Lloyd *vs.* Guibert, and commenting on Mr. Westlake's opinion that the obligation of the shipowner must be measured either by the law of the place where the charter party is entered into, or if by any other law, by the law of the port of delivery as the place of performance, he says at page 324: "The light thrown upon the true princi- "ple by the subsequent decision in Lloyd *vs.* Guibert "enables the reader to detect the error in West- "lake's argument:—The true rule is that the obliga- "tion of a contract must be measured by the law to "which the parties intended to refer or must be "assumed to have submitted themselves. And this "law though it may be, and most generally is, the law "of the place where the contract is entered into, is not "so necessarily, or by any *praesumptio juris de "jure*, which would be incontrovertible.

"Now the essence of the decision in Llyod *vs.*

"Guibert is that in every contract of affreightment "there are such circumstances. Contracts of "affreightment may be made in half savage or bar- "barous ports, or even to take a more familiar "instance in such places as Alexandria, where it "would be absurd to hold that the parties intended "their mutual rights to be regulated by the local "maritime law of the place of affreightment, etc."

The choice of the law of the vessel, *i. e.*, the law of her owner, appears therefore "not only in "accordance with the probable intention of the "parties, but also most consistent and intelligible, "and therefore most convenient to those engaged "in commerce."

Other text writers adopt the same view. Carver, Carriage by Sea, sec. 213, page 212. Machlachlan Law of Merchant Shipping (2 Ed.), page 161.

If it is to be presumed that the law of the place of shipment is to govern the liability of the ship owner, a different liability will arise as to contracts of affreightment, by American vessels, running in a regular line between ports of the United States and England, accordingly as the voyage is to or from the United States, and the law of negligence as declared by this court in contracts if it applies to carriage by sea will govern only the contracts of such vessels when made in ports of the United States.

There is undoubtedly difficulty in the application of any general rule to the law governing such contracts, but the rule as to ships seems to commend itself by its simple and practical application.

The cases in which the courts of one nation

refuse to enforce contracts, valid according to the law of the place of performance, are exceptional.

Judge Story says, Conflict of Laws, (8 Ed.) §§242-244: "Generally speaking the validity of a "contract is to be decided by the law of the place "where it is made, unless it is to be performed "in another country, for, as we shall presently "see, in the latter case, the law of the place of per- "formance is to govern. If valid there, it is by "the general law of nations *jure gentium*, held "valid everywhere by the tacit or implied consent of "the parties. The rule is founded not merely in the "convenience, but in the necessities of nations, for "otherwise it would be impracticable for them to "carry on an extensive intercourse and commerce "with each other," and citing from Mr. Justice Best in Forbes *vs.* Cochrane, 2 B. and C., 448. "'In cases turning upon the comity of nations "'*comitas inter communitates*' it is a maxim that the "comity cannot prevail in cases where it violates the "law of our own country, or the law of nature, or the "law of God.'"

The exceptions are of prohibited trade, such as the slave trade. Pope *vs.* Nickerson, 3 Story R., 484.

But to come within this exception it is not sufficient that a contract is contrary to the statutes of the country where it is sought to be enforced. Therefore a bond conditioned for the faithful performance of the duties enjoined by a law of Kentucky, which authorized the obligees to sell lottery tickets for the benefit of a college in Kentucky, was enforced in the State of New York,

where the sale of lottery tickets was prohibited by law. Com. of Kentucky *vs.* Bassford, 6 Hill, 526.

So a foreigner, who is not prohibited from carrying on the slave trade by the laws of his own country, recovered in a British court of justice damages sustained by reason of the unlawful seizure of a cargo of slaves on board of a ship employed by him in the African slave trade. Madrazo *vs.* Willes, 3 B. & Ald., 353.

But subject to these exceptions, one nation will not undertake to obstruct or overrule the commercial policy of another. The law of carriers in the United States cannot be said to be identically the same as that governing carriers in foreign countries, nor is it uniform in the different States; and it may be questioned whether the same rules which forbid a land carrier to claim exemption for the negligence of his servants apply to the vessel owners.

In the case of the contracts in the bills of lading made in the State of New York, the exception of liability for negligence was valid both by the law of the place of contract and by the law of the vessel's nation. The decision in Railroad Co. *vs.* Lockwood, 17 Wallace, 357, refused to follow those of the courts of New York as to the validity of such exceptions, because on a question of general commercial law the Federal Courts administering justice in New York have equal and co-ordinate jurisdiction with the courts of that State.

The rules regulating the liability of carriers are of municipal policy which every community must make

for itself. It cannot be contended that the English law can be brought within the category of those which will not be enforced because against public policy, or natural justice. Carver on Carriage by Sea, page 215.

Accordingly in The Oranmore, reported in 24 Fed. Rep., 922, a shipment of cattle was made at Baltimore by a citizen of the United States, on board of a British steamer. The bill of lading contained an exception of liability for loss or injury occasioned by the wrongful act, default, negligence or error in judgment of the officers, crews, stevedores, or other persons in the service of the ship, and the bill of lading was made under and subject to the terms of "a live stock freight contract" which contained the following stipulation: "Any "questions arising under this contract or the bill of "lading against the steamer or her owners shall be "determined by English law in England." The cattle shipped received injuries at sea by reason of the insufficient construction of stalls provided by the ship. The court *held* that the contract was governed by the law of England as to the validity and interpretation of the contract, and that as under the rulings of the English courts upon similar bills of lading, the owners were exempt from liability, the case was decided in accordance with the law of England, and the libel was dismissed.

IV. Will the Admiralty Courts of the United States ascertain the law of England in cases affecting the liability of the owners of English vessels sued in their courts by reference to the English

decisions and authorities, or must the English law be proved as a fact by the testimony of experts?

That the laws of England permit ship owners to stipulate for exemption for loss occasioned by the negligence of their servants is authoritatively settled. The Duero, L. R. 2., A. & E., 383. Chartered Mercantile Bank of India *vs.* The Netherland India S. N. Co., L. R. 10, Q. B. D., 521. Steel *vs.* The State Line Steamship Co., L. R. 3, App. Cases, page 72. Carver on Carriage by Sea, 101. Maud & Pollock on Shipping, page 358.

These cases are reported in authoritative reports which are accepted by the courts in the United States as containing the decisions of the British Courts as to the law of England. The testimony of an expert would add nothing to their force.

It is not to be disputed that the laws of foreign countries, as a rule, must be proved as facts. But the intimate connection between the law of the United States and of England has led able judges to question whether the courts of the United States will not judicially notice the laws of England as reported in the authoritative reports, and Judge Lowell so decided in the case of The Pawashick, 2 Lowell, 142, in an opinion where the question is very carefully considered.

Chief Justice Shaw, of Massachusetts, in the case of Carnegie *vs.* Morrison, 2 Metcalfe, at page 404, uses this language: "It is undoubtedly a general "rule that the customary unwritten law of a foreign "country is to be proved by the testimony of wit- "nesses. But the peculiar relation in which we

"stand to the common law of England may require "some modification of this rule."

Such considerations especially apply to the Courts of Admiralty, which are in some respects international courts, dealing with the maritime law of the nation to which the vessel sued belongs. Reasons which would require the proof of such foreign law in other courts do not apply to the trial of causes in admiralty. All courts take judicial notice of the law merchant. A court which takes jurisdiction of a cause affecting a foreign vessel or its owners in relation to contracts of affreightment performed in such a vessel, must necessarily in a proper case ascertain what law governs transactions of foreign vessel owners, and the rights and authority of the master. The comity which requires such courts to take jurisdiction in such cases requires them to ascertain the law of the nation to which the vessel belongs. And it may be trusted to the judge to ascertain what the law is from the adjudications of such foreign tribunals as those of England, and such text books as are habitually referred to, to ascertain the law administered in the courts of the United States? In cases of doubt the court can obtain the opinions of foreign experts.

Dr. Lushington in the case of The Peerless, Vern. & Lush. Rep., at page 40, expresses his views on this subject. The question was as to a collision which occurred in the river Hooghly. "It is the duty "of the court to carry into effect the local laws of the "place where the transaction in question occurred; "I should therefore pay regard to the local laws of

"India or Canada, as I would to those of Liverpool "or Newcastle. And to ascertain those laws I do "not consider that I am bound to require all the "strictness of proof which a court of common law "would require in proving a foreign law, and for "the following reasons, etc.

"Secondly. More especially because in matters "of evidence I must look to the practice of my pre- "decessors and the great distinction which prevails "between the description of causes which come un- "der the cognizance of the Court of Admiralty and "those in other courts. The cases over which the "Court of Admiralty exercises jurisdiction occur in "all parts of the world, on the high seas and in "remote places.

"It is a well-known principle confirmed by author- "ity that Courts of Admiralty are to proceed *levato* "*velo*, that is with the utmost expedition. In order "to carry this principle into effect this court has, "both in foreign matters and civil suits, been accus- "tomed to receive evidence which would not have "been admitted in other courts."

He subsequently adds: "I think the court may "be safely trusted to weigh evidence that might not "be so safe to leave to a jury."

In the case of The J. F. Spencer, 3 Ben., 337, copies of official surveys, estimates of repairs and report of sale were received in evidence, although in a proceeding at law they would not have been received for any purpose, because "Courts of "Admiralty are not bound by all the rules of evi- "dence which are applied in the courts of common

"law, and they may, where justice requires it, take "notice of matters not strictly proved."

Also, in The Boskenna Bay, 22 Fed. Rep., 662, the terms of a charter-party were allowed to be given in evidence, although it could not have been read in evidence without more formal proof in a court of law.

Also, in accordance with this view the foreign law has been recognized as governing transactions without strict proof, and upon such proofs as are found in the reports of English decisions.

In the case of The Maud Carter, 29, Fed. Rep., 156, claims for premiums of insurance and spars used in the construction of a vessel were allowed as a lien upon a British vessel, although according to the decisions in the same circuit the lien would not have been allowed by the law of the United States.

The court says: "This is a British vessel and "subject to British law. Under the circumstances "it is the duty of the court to administer and apply "the British law exactly as it would be applied if the "vessel were in an English court. The court, under "the decision in The Riga, L. R., 3 Adm. and Ec., 516, "must hold that insurance expressly authorized by "the owners is a 'necessary,' within the English act "defining the jurisdiction of the Admiralty Court, "and that under that act it created a maritime lien "upon the vessel."

In The Velox, 21, Fed. Rep. 479, the admiralty enforced the priority of lien against a Dutch vessel according to the code of the Netherlands: it does not appear that expert testimony was produced.

In Covert *vs.* the Br. Brig Wexford, 3 Fed. Rep., 577, the court construed the British Merchant Shipping Act, and gave the master of a British vessel a lien on the vessel under that Act of Parliament, which was not given by the law of the forum.

In The Adolph, 7 Fed. Rep., 501, the code of Sweden was applied, giving the crew three months' wages on abandonment of the voyage. These cases, although not in courts of the last resort, show that the courts of admiralty have relaxed the rules of evidence as to the proof of the foreign law, as well as of other facts. If stricter proof were required they would be hampered in the exercise of their jurisdiction.

In this court the following judgments show a relaxation of the rule as to the proof of the foreign law. In the case of Smith *vs.* Condry, 1 How., page 28, a suit was brought for a collision between two American ships in the river Mersey. The defence was that The Tasso, the injuring vessel, was in charge of a licensed pilot of the port of Liverpool, whom the master was compelled to take or incur a penalty, or be liable for full pilotage, and the defendants gave in evidence the British statutes, and the court decided it under the construction of the British Pilotage Act in Carruthers *vs.* Sydebotham, 4 Maule and Sel., 77, that the master was not responsible for the default of the pilot. The court accepted the construction of the Liverpool Pilotage Act without the aid of expert testimony.

In The Julia Blake, 107 U.S., 418, the question was as to the validity of a bottomry bond on cargo given

by the master of a British vessel at St. Thomas for want of communication with the owners. The court says, at page 426, "Whether, since The Julia "Blake was a British vessel, the authority of her "master in a Danish port is to be determined by the "English law instead of by the general maritime "law or the law of Denmark, are questions we "deemed unnecessary to consider; for in our opinion "even under the most liberal construction of any "recognized rule which can be invoked for the "authority of the master over the cargo, this bond "cannot be sustained."

This case is authority because the court did not refuse to ascertain the law of England if applicable to an English vessel, because it was not proved as a fact.

In The Maggie Hammond, 9 Wall., 435, this court enforced a lien against an English vessel for breach of a contract of affreightment made in Scotland without proof of the law of England or of Scotland.

For the foregoing reasons it is submitted

First. That the contracts contained in the bills of lading for shipments by the British vessel Montana are governed by the British law, and not by the law of the forum, and that the shippers are presumed to have contracted with reference to the law of Great Britain.

Second. That the contracts in the bills of lading for shipment by The Montana exempting the owners from liability for loss occasioned by the negligence of their servants were valid under the law of Great

Britain as a defence to these actions on the facts found, that the loss was caused by negligent navigation of the respondent's steamship.

Third. That there was sufficient proof on the trial of the cause of the law of Great Britain in the authorative reports of decisions in the British Courts, which the Circuit Court should have received as evidence of the law of Great Britain as to the validity of the exceptions of liability for negligence of the servants of the owners of British vessels.

Fourth. That the absence of the allegation in the pleadings that the law of Great Britain differed from that of the forum was a subject of amendment in any stage of the proceedings, and that this court can permit such amendment to be made in the present stage of the proceedings.

MORTON P. HENRY.

Supreme Court of the United States.

OCTOBER TERM, 1887.

Nos. 56 and 57.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, (LIMITED,) APPELLANT,

vs.

THE PHENIX INSURANCE COMPANY.

THE SAME, APPELLANT,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW-YORK.

BRIEF ON BEHALF OF THE NORTH GERMAN LLOYD STEAMSHIP COMPANY, FILED HEREIN BY LEAVE OF THE COURT.

HENRY BESSEY, Printer, No. 47 Cedar Street, New-York.

Supreme Court of the United States.

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BRIEF ON BEHALF OF THE NORTH GERMAN LLOYD STEAMSHIP COMPANY, FILED HEREIN BY LEAVE OF THE COURT.

STATEMENT.

It will be unnecessary in this brief to state in detail all the facts which characterize the loss at sea, for which recovery is sought in these cases, as they will appear at length in the brief of counsel, who are directly charged with the conduct of the causes.

The merchandise, for the loss of which indemnity is claimed in both cases, was shipped under through bills of lading, from the interior of the country to Liverpool, in England; the land carriage being by rail to New-York,

thence to Liverpool by sea, in steamships regularly running between these two ports. Covering that portion of the route which is by sea, the bills of lading are maritime contracts, and in each of them are the following stipulations :

"And it is further agreed, that the property shall be trans-
"ported from the port of New-York to the port of Liver-
"pool, England, by the said Steamship Company, with
"liberty to ship by any other Steamship or Steamship Line,
"subject to the following terms and conditions, viz. :

"To be delivered from the ship's deck, where the ship's
"responsibility shall cease, in the like good order and con-
"dition at the aforesaid port of Liverpool, England, the acts
"of God, the Queen's enemies, pirates, robbers, thieves,
"vermin, barratry of master or mariners, restraints of
"princes, loss or damage resulting from insufficiency in
"strength of packages, sweating, leakage, breakage, stow-
"age, or contact with other goods, risk of craft, explosion,
"or fire at sea in craft or on shore, before lading or after
"unlading, accidents from machinery, boilers, steam, or any
"other accidents of the seas, rivers, and steam navigation,
"of whatever nature or kind soever, excepted ; whether any
"one or more of all such exceptions arise, occur, or are in
"any way occasioned from or by the negligence, default, or
"error in judgment of the master, mariners, engineers, or
"others of the crew, or of any of the servants or employees
"of the ship-owners, or otherwise, however ; and with
"liberty during the voyage to call at any port or ports, to
"receive fuel, to load or discharge cargo, or for any other
"purpose whatever ; to sail with or without pilots, to tow
"and assist vessels in all situations, and in the event of the
"said steamer putting back to New-York, or into any other
"port, or being otherwise prevented from proceeding in the
"ordinary course of the voyage, to tranship the goods to
"any other steamer."

* * * * * * * * *

"NOTICE.—In accepting this bill of lading the shipper
"or agent of the owner of the property carried expressly

"accepts and agrees to all its stipulations, exceptions and "conditions, whether written or printed."

It was held below, both in the District and Circuit Courts, sitting in Admiralty, that these stipulations in the bills of lading, whereby it is expressly agreed, between the shipper of the goods and the Steamship Company, that the ship should not be liable for loss or damage to the goods occasioned by stranding, caused by negligence, default or error of judgment of the master or mariners, are invalid. They therefore decreed the ship-owner liable for such loss, notwithstanding these stipulations in the bills of lading.

The question of the correctness of this ruling is one of great interest to all ship-owners, and especially to those who run regular lines of steamships between the port of New-York and European ports, and constantly have at risk cargoes of immense value, subject to be injured or loss through negligence of the master or mariners, however carefully the latter may have been selected by the owners.

It must be, and is assumed in this brief, that the rule of the *common law*, as laid down by this Court, is, that a common carrier cannot legally stipulate with the owner of goods carried, that the carrier shall not be responsible for their loss or injury, caused by the negligence of his agents and servants.

Railroad v. *Lockwood*, (17 Wall. 357.)
Express Co. v. *Caldwell*, (21 " 264.)
Railroad Co. v. *Pratt*, (22 " 123.)
Bank of Kentucky v. *Adams Express Co.* (93 U. S. 174.)

It is not improper to observe, however, that this Court reached this conclusion only after some apparent doubt and hesitation, and in opposition to the view upon the same subject held and adhered to by many other courts of high character for learning and ability in this country, as well as by the highest courts of Great Britain, all of which courts are

authority upon questions of the common law, and administer that law in their respective jurisdictions.

It may well be said, therefore, that this question was, until declared and determined by this Court, a doubtful question even under the common law. The controlling consideration with this Court in the determination of this rule is that it is contrary to public policy to permit a common carrier to relieve himself from this responsibility, the particular reason of public policy upon which the decision is based being that the public are interested in maintaining the fidelity and diligence of the common carrier by this sanction of its personal responsibility or liability to loss in case its servants prove negligent; and a further consideration is adverted to by the Court, that the common carrier and shipper do not deal on equal terms, in fact, that the shipper is at the mercy of the carrier, who enjoys a sort of monopoly. This last suggestion seems especially applicable to railroads whose cases were those before the Court, and which have in many cases a practical monopoly upon a given line of land carriage, but has little if any application to carriage by the sea, which is absolutely free to all the world. But the case now presented to this Court is not a question of the common law liability of the common carrier, but a question of the maritime law of the United States. It is unnecessary to point out to the Court that the same rule of liability which governs the question by the common law does not necessarily obtain in the maritime law on a particular point. The maritime law of the United States is the maritime law of the world, or the law of the whole commercial world in relation to maritime contracts and maritime torts, so far as it has been adopted by or is applicable to the United States. The common law is the law of England and the United States and the British Colonies. Its rules have no authority or sanction beyond the limits of the countries in which it obtains, except so far as the judicial or legislative powers of other States may have enacted or declared similar provisions; and in determining what is the maritime law in a point not yet settled it is incumbent upon the Court to consider what view of the

question is taken by the Courts or the commercial codes of all other maritime nations.

It is proper to remark, that in the leading case of *Railroad Co.* v. *Lockwood*, the subject of the responsibility of the owners of sea-going vessels was alluded to in the opinion of the Court, but as the distinction now contended for does not appear to have been made or considered by the Court, we respectfully submit that the question now under consideration should not be deemed to have been conclusively settled in that case.

Nor did any of the cases in this Court which followed *Railroad Co.* v. *Lockwood* directly discuss or determine this question.

This distinction between carriers by land and by sea as to the larger power of the latter to limit their responsibility by special stipulations in charter parties and bills of lading, seems to have been recognized by Chancellor Kent, when he says: (2 Commentaries, pp. 857 and 858, bottom paging, 13th Ed.:)

"In *Morse* v. *Slue*, it was decided, in the reign of Charles "II., by the Court of K. B., upon great consideration, that "the master of a vessel employed to carry goods beyond "sea, in consideration of the freight, was answerable as a "common carrier. It was admitted, in that case, and after- "wards declared by Lord Hardwicke, in *Boucher* v. *Lawson*, "that the action lay equally against masters and owners of "vessels. The doctrine in those cases has been recognized "ever since; and it applies equally to the carrier of goods "in the coasting trade from port to port, and to a bargeman "and hoyman upon a navigable river. * * * * * * "They are all liable in their respective characters as com- "mon carriers, *and to the whole extent of inland carriers*, "EXCEPT *so far as they may be exempted by the exceptions* "*in the contracts of charter party and bill of lading, or by* "*statute.*"

In the foregoing reference to the history of this question as a common law question it has already been observed that at

least one great maritime power, Great Britain, even in administering the common law, has not found it necessary to declare this supposed restriction upon the contract between the carrier and the shipper, for the reasons of public policy which have found force and favor with this Court. Rulings of the British Courts on this subject are of special importance on account of her immense interest in commerce all over the world; and it is obvious that in a maritime contract of affreightment between a British ship and British owners, to be performed between British ports and upon the high seas, there would be no propriety whatever in holding invalid a contract which, by the law of Great Britain, is valid and effective.

It is believed that the foreign law, generally, agrees on this point with that of Great Britain and the State of New-York, and differs from the rule of the common law as declared by this Court. If this be so, then it would seem to follow, that this Court, sitting as a Court of Admiralty, and having regard to the views which obtain among maritime nations on this point, will be bound to hold, that whatever may be the rule of the common law on this subject, the rule of the maritime law permits such a contract as a valid contract between ship and shipper.

We are not without the aid of authority, as to the view which the maritime law takes of this subject. The law of marine insurance is a part of the maritime law of the world, and it is well settled that the ship-owner may insure against peril occasioned by the negligence of the master and mariners. It is an every day practice for the ship-owners to insure against loss and damage by collision, however happening, and this Court has, in the recent case of the *Phœnix Insurance Company* v. *Erie and Western Transportation Company*, (117 U. S. 312,) recognized and affirmed the right of the ship-owner to insure himself against damage arising from the negligence of the master or mariners. Now, if it were a controlling principle of the maritime law that the ship-owner should be held subject to his responsibility to the owner of the goods, as matter of public policy, then that same reason of public policy would peremptorily

forbid the insurance by the ship-owner against this peril. It is no answer to this to say, that such insurance does not take away or affect the responsibility of the ship or the ship-owner to the owner of the goods, and that he remains still responsible, although insured, and that the only difference is, that he has more certainly the means of responding to his obligation, according to the dictum of Mr. Justice Gray, in the last case referred to. This, we submit with all deference, is no answer, because the same public policy which requires him to be bound to the cargo, would be entirely defeated if he may reimburse himself from the insurer. By effecting such insurance, his diligence is necessarily relaxed, and it becomes a matter of indifference to him whether the master and mariners are diligent or not, for if they are negligent and loss ensues, he collects the amount of the insurers, and it is a matter of indifference to the owner of the ship whether he collects of the insurers that which he has to pay the owner of the goods, or whether he is directly absolved from paying the damages to the owner of the goods. In either case he is equally absolved from that *liability to loss* which it is assumed secures his diligence, and the necessity for which is the sole basis of the alleged public policy.

It is respectfully submitted, therefore, that the dictum above referred to overlooks this important consideration, and that permitting the insurance removes the sanction for diligence just as certainly and as completely as the stipulation in the bill of lading exempting the ship from liability, and the consideration of public policy which permits the insurance cannot forbid the stipulation. In fact, it is obvious that if the common law rule obtains between the ship and the shipper by the maritime law, and the maritime law permits insurance by the ship-owner against the peril in question, then the ship-owner is allowed to insure against this peril with all the world as underwriters, excepting only the owner of the goods. He alone is forbidden to insure the ship-owner against this peril, by entering into the stipulation in question. This, then, is a public policy which allows itself to be outwitted, which introduces into a system of law a merely

arbitrary prohibition between two particular parties without reason to make a certain contract, when it can be made by one of them with all the rest of the world.

From this admitted rule of the maritine law, therefore, allowing the ship-owner to insure, it is a logical and proper inference that the maritime law does not forbid the stipulation between the ship and shipper, for this is merely an insurance by the shipper taking upon himself the risk of this peril for a consideration.

Aside from the questions heretofore presented it is also obvious that there is a peculiar reason why this rule of the common law should not obtain in contracts of affreightment by sea. The conditions are all different; the ship leaves the port in a seaworthy condition, with a competent master, properly manned, and from the time it leaves port it is utterly and absolutely in all matters of navigation beyond the control and power of its owners. Assuming that the owners have exercised due diligence in the appointment of master and mariners, and the equipment of the vessel, they are absolutely without fault, in case through the negligence of the master or mariners arising after the voyage commences, the vessel is wrecked or the goods injured. This is not true in the like degree of land carriage, to which all the former decisions of this Court relate. Take a railroad for instance; the management of the road, the conduct of the employees, is in a proper sense always and everywhere under the immediate observation and control of the Board of Directors or the managing officers; its president, superintendent and agents are apprised from day to day, and hour to hour, of all its acts of management and operation. This Court has said that it is not a just and reasonable restriction of the liability of a railroad company as a common carrier to absolve itself from damage resulting from the negligence of its servants; it has applied the test which the English Courts have applied, though with a different result, that is to say, whether the restriction in question is just and reasonable between the parties, and has said that it is not, and with that conclusion we do not quarrel; but we do say, that with a well equipped and properly manned ship going to sea in a seaworthy con-

dition, with a competent master and mariners, such a restriction upon the liability of the owners is just and reasonable.

In the case of a railroad it is not just and reasonable, perhaps, because, by greater diligence of supervision, by more minute and careful inspection, by stricter observation, the danger may be foreseen and prevented. The peril is not absolutely beyond the control of the officers of the corporation, but with a ship at sea it is quite otherwise. In the case of a ship, no superior degree of care, no more minute and constant observation on the part of the owners are possible. If the rule obtains with the ship at sea, it must be because the maritime law does not permit a ship-owner to protect himself by contract with the shipper against perils absolutely beyond his control, as much as those arising from the violence of the winds or the sea, against which he has always been permitted to protect himself by stipulation with the shipper.

We have not encumbered this brief with citations from the decisions of foreign tribunals, as they have been industriously gathered and presented in the brief of the learned counsel for the appellants, to which we refer. (Pp. 47 to 80, inclusive.)

From these decisions it will appear how generally, if not universally, among maritime nations, it has been held that carriers by sea can limit their liability for the negligence of the master and crew, by special contract with the shipper.

We do not for a moment assume that this Court will be deterred from declaring its own view of the law by any array of the consequences which may follow its decision. Nevertheless, the consequences of a new rule of law, or of extending the operation of an old rule to a new and different field of commerce, are proper to be considered on the question whether the new departure is just and reasonable. The application of the doctrine of *Railroad Company* v. *Lockwood* to carriers by sea, would, so far as the Federal Courts are concerned, establish a rule affecting commercial contracts and liabilities, in conflict with the general judgment of the Courts of most, if not all, enlightened maritime nations of the world. It would at once strike from the contracts, affecting millions of property now afloat, provisions

which both ship-owners and shippers have deliberately assented to, by rendering them nugatory whenever they may come within the jurisdiction of an Admiralty Court of the United States, although if they happen to come within that of any other Admiralty Court in the world they would be enforced. It would practically prohibit such contracts hereafter, so far as all that vast commerce is concerned which is carried on between this country and foreign ports. As we understand the maritime law as generally declared by the Courts of foreign countries, such an application of the rule would be in direct conflict with that recognized and enforced abroad. Over ninety per cent. of our foreign commerce is carried on foreign bottoms, and these ships and ship-owners would be subject to one rule of commercial law in their own countries and another and wholly different one in the United States, affecting precisely the same transactions relating to their whole business of transportation.

In conclusion, we cannot do better than to refer to the elaborate and luminous opinion of this Court in the case of *The Lottawanna*, (21 Wall. 558,) delivered by *Mr. Justice Bradly*, in which, while recognizing the fact, that some modifications have been introduced into the Maritime Code by different nations, he enforces with great vigor the doctrine, that "the convenience of the commercial world, bound together as it is by mutual relations of trade and intercourse, demands, that in all *essential* things, wherein those relations bring them in contact, there should be a *uniform law*, founded on natural reason and justice." And, again, "This view does not, in the slightest degree, detract from the proper authority due to that venerable law of the sea, which has been the subject of such high encomiums from the ablest jurists of all countries; it merely places it upon the just and logical grounds upon which it is accepted, and, with proper qualifications, received with the binding force of law in all countries."

WM. G. CHOATE,
WM. D. SHIPMAN,
Of Counsel for the North German Lloyd Steamship Company.

SUPREME COURT OF THE UNITED STATES.

October Term, 1887. Nos. 56 and 57.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited),

Appellant,

vs.

THE PHŒNIX INSURANCE COMPANY,

Appellee.

SAME,

Appellant,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA,

Appellee.

BRIEF FOR APPELLANT

ON BEHALF OF OCEANIC STEAM NAVIGATION COMPANY (LIMITED,) FILED HEREIN BY LEAVE OF THE COURT.

EVERETT P. WHEELER,

Of Counsel.

Supreme Court,

OF THE UNITED STATES.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), Appellant, *against* THE PHOENIX INSURANCE COMPANY, Appellee.	No. 56.	THE MONTANA.
The Same *against* THE INSURANCE COMPANY OF NORTH AMERICA, Appellee.	No. 57.	

Brief for appellant submitted by counsel for the Oceanic Steam Navigation Company (Limited) by leave of the Court.

STATEMENT.

The facts in this case are so fully stated in the

brief submitted by Messrs. Wilcox & Hobbs that it is unnecessary to recapitulate them here. Nor will the counsel submitting this brief make any argument upon the questions arising on the record, relating to the finding of negligence on the part of the Master of the Montana, assuming for the sake of the argument that the finding of the Circuit Court on this subject will be sustained. The counsel will confine the present brief to the consideration of the following questions:

Is the validity of the clause in the bill of lading which exempts the Montana from liability for the negligence of the Master to be determined,

First—By the law of the place of performance, or,

Second—By the law of the place where the negligent act was committed, or,

Third—By the law of the place where the contract was made, or,

Fourth—By the law of the nation to which the Montana belonged, or, in other words, by the law of the flag?

First.

The Law of the Place of Performance.

The validity of clauses in contracts of affreightment should be determined by the law of the place of performance. The precise question thus to be argued is a new question in this Court. It is true that this Court has frequently determined that clauses in bills of lading, executed in this country, for transportation of goods by rail from one part of this country to another, which purport to exempt the carrier from liability for the negligence of his servants are invalid. These decisions are put on the ground that it is against the public policy of this country that common carriers should be allowed to stipulate for such exemption. But this Court has never undertaken to determine that the policy of Great Britain is the same in this particular as the policy of the United States.

"The general principle in relation to contracts made in one place, to be performed in another, is well settled. They are to be governed by the law of the place of performance."

Miller *vs.* Tiffany, 1 Wall., 298, 310.
Railroad Co. *vs.* Bank of Ashland, 12 Wall., 226.
Bell *vs.* Bruen, 1 How., 169, 182.
Cox *vs.* U. S., 6 Peters, 172, 203.
Le Breton *vs.* Miles, 8 Paige, 261.
Burckle *vs.* Eckhart, 3 N. Y., 132.

The rule thus stated was one of the first to be applied to the solution of the many intricate questions that arose from the conflict between the laws

of different countries, and is expressed with precision by the writers on the civil law.

Vulgo quidem ita traditum invenio, observare debere statutum, non loci illius ubi ventilatur restitutionis quaestio, neque etiam regionis illius ubi laedens aut laesus domicilium fovet, sed magis illius territorii in quo contractus seu negotium damnosum celebratum est : nisi contractus implementum ad alium locum sit destinatum, tunc enim hujus loci leges in judicando spectandas esse.

Voet ad Pand., Vol. 1, Paris Ed. p. 315, lib. 4, tit. 1, Sec. 29.

To the same effect is the Digest Lib. XLIV., Tit. VII., 21.

"*Contraxisse unusquisque in eo loco intelligitur in quo, ut solverit, se obligavit.*"

This rule has been carried so far as to sustain the validity of a contract for a loan which was usurious and void by the law of the place where it was made, but valid by the law of the place where the money was payable.

Andrews *vs.* Pond, 13 Peters, 65, 78.
Miller *vs.* Tiffany, 1 Wall., 298, 310.

So in Penobscot and Kennebeck R. R. Company *vs.* Bartlett, 12 Gray, 244, the Court say (p. 246), referring to a contract made in Boston, of subscripions to stock in a railroad in Maine: "We are of the opinion that the validity, obligation and interpretation of the contract must be governed by the law of the State of Maine. * * * We cannot doubt that the place of performance of the contract was in the State of Maine, and that it was so understood and intended by the parties."

The difficulty that has arisen has been to determine how to apply this rule to cases where the

performance of the contract was to take place in different jurisdictions. It requires but an extension of the rule and one which is really required by the reasons underlying it, to hold that the validity and interpretation of the contract are to be determined, so far as it relates to the performance in each jurisdiction, by the law of that jurisdiction.

The rule thus stated found its first application to the law of bills and notes. These are often made or accepted in one place and endorsed in another, and the uniform rule is that the validity and effect of the several contracts of acceptance and endorsement are to be determined by the law of the respective places where each is to be performed.

In other words, wherever the contract either of the acceptor or endorser is to be performed, the law of that place is the measure of his duty and liability.

Robinson *vs.* Bland, 2 Burr., 1077.
Hibernia Bank *vs.* Lacombe, 84 N. Y., 367.
Everett *vs.* Vendryes, 19 N. Y., 436.
Rothschild *vs.* Currie, 1 Qu. B., 43.
Cooper *vs.* Earl of Waldegrave, 2 Beav., 282.
Boyce *vs.* Edwards, 4 Peters, 121.

The same rule has been frequently applied to carrier's contracts made in one place to be performed in several jurisdictions. In such cases it has been held that :

"If a contract is to be performed partly in one country and partly in another country, it admits of a double aspect. Nay, it has a double operation, and is as to the particular parts to be interpreted distinctively ; that is according to the laws of the

country where the particular parts are to be performed or executed."

Pope *vs.* Nickerson, 3 Story C. C., 465.
Barter *vs.* Wheeler, 49 N. H., 9.

In this latter case a contract was made in one State, to be performed partly there, partly on the Great Lakes, partly in New York, and partly elsewhere. Court held that defendant's liability for a loss occurring in New York, was governed by the laws of that State. At page 29, the Court says: "The original contract was made at Toledo, Ohio, but was to be performed partly in New York, and the loss was altogether in that State. If the contract was to have been performed wholly in New York, is is clear that it would be governed by the laws of that State; * * * and if to be executed partially in New York, we perceive no reason why in respect to that part, the law of that State should not govern, and such is the doctrine laid down in Story on Contracts, § 655, where it is said that if a contract is to be performed partly in one country and partly in another country, it has a double operation, and each portion is to be interpreted according to the laws of the country where it is to be performed, and it is said that the rule applies to a bill of lading of goods, some of which are to be delivered at one port, and some at another in different countries."

Gray *vs.* Jackson 51 N. H. 9, 39; S. C., 12 Am. Rep., 1, (1871).

Pomeroy *vs.* Ainsworth, 22 Barb., 118, 128 (1856).

In this case the Court says:

"If a contract is to be performed partly in one country and partly in another, each portion is to be interpreted according to the laws of the country where it is to be performed."

There is a class of cases which have arisen upon

carrier's contracts, in which the courts have held that their validity and interpretation are to be determined by the law of the place at which the transit is to terminate.

Curtis *vs.* Delaware, L. & W. R. R., 74 N. Y. 116.

In Brown *vs.* Camden & Atlantic R. R., 83 Penn., 316, the contract was made in Pennsylvania with a New Jersey railroad company to transport a passenger and his trunk from Philadelphia to Atlantic City, N. J. The trunk was lost and it was held that the liability of the carrier was to be determined by the law of New Jersey. The Court says (page 318):

"It is perfectly well settled by a host of authorities, which it would be an affectation of learning to cite, that it is the law of the place of performance by which the mode of fulfilling their contracts and the measure of liability for their breach must be determined." The Court in that case adds that even if the loss had occurred in Pennsylvania, it must still be presumed that the law of New Jersey would govern, because the defendant was a New Jersey corporation, and that the contract with it must be presumed to have been made with reference to New Jersey law.

It is believed that the cases previously cited more correctly state the law on the subject of carriers' contracts. No reason is perceived why each State through which the transit takes place should not be permitted to regulate by its own law, whether made by Judges or the Legislature, the consequences of the breach of the contract of carriage, or the validity of its terms, with reference to that portion of the transit through its own territory. But whether the law of each jurisdiction or the law of the place where the transit is to terminate should

determine the rights of the parties, the result in the case at bar would be the same.

Second.

Presumed Intention.

The reason given for the decisions to which reference has been had, is that parties are presumed to have contracted with reference to the law of the the place of performance. This presumption in most cases has been treated by the Courts as a conclusive one, and no evidence of the intention of the parties in that regard has been required.

Prentiss *vs.* Savage, 13 Mass. 23.

In this case the Court say:

"It seems to be an undisputed doctrine with respect to personal contracts that the law of the place where they are made shall govern in their construction; except when made with a view to performance in some other country, and then the law of such country is to prevail. This is nothing more than common sense, and sound justice, adopting the probable intent of the parties as to the rule of construction. * * * * * * And it is also to be presumed, when the contract is to be executed in any other country than that in which it is made, that the parties take into their consideration the law of such foreign country. The latter branch of the rule, if not so obviously founded upon the intention of the parties as the former, is equally well settled as a principle in the law of contracts."

If however the Court is to indulge in presumptions as to the probable intentions of the parties, the only possible presumption can be that they in-

tended that the clause in the contract in question was a valid clause. If this was not their intention, why should they have made it? On this subject the attention of the Court is particularly called to the language of the British Privy Council in P. & O. Co. *vs.* Shand, 3 Moore, P. C. N. S., 272, 291.

"Was it intended that the stipulation, in case of an alleged breach of contract should be construed by the rules of the English law, which would give some effect to it, or by those of the French or any other law, according to which it would have none, but be treated as a merely fruitless attempt to evade a responsibility inseparably fixed upon the appellants as carriers. The question appears to their Lordships to admit of one answer only; but if they take the respondent so to have understood the intention of the appellants they must take him to have adopted the same intention. It would be to impute want of good faith on his part to suppose that with his knowledge he yet intended to enter into a contract wholly different on so important an article; he could not have done this if the intention had been expressed, and there is no difference as to effect between that which is expressed in plain terms, and that which is implied and clearly understood."

Third.

Liability for tort to be determined by law of place where tort committed.

It has been held in many cases that liability for a tort is to be determined by the law of the place where the tort was committed. This question has arisen most frequently in actions for injuries

causing death. It is well settled that if the law of the place where the tort was committed does not give a right of action, no action is sustainable.

The Harrisburgh, 119 U. S., 199.
Ins. Co. *vs.* Brame, 95 U. S., 754.
Dennick *vs.* R. R. Co., 103 U. S., 11.

In this latter case the Court say: "It is indeed a right dependent solely on the statute of the state."

In the Scotia, 14 Wall., 170, this rule was applied to the case of a collision occurring on the high seas.

Fourth.

Lex Loci Contractus.

Contract not *malum prohibitum* nor *malum in se*.

If the Court do not adopt the rule just contended for, the only alternatives are to hold that the validity of these clauses of exemption is to be determined either by the law of the place where the contract is made or by the law of the flag. The latter is considered under the sixth point. The former would require this Court to sustain the validity of a through bill of lading made in Liverpool for transportation to Chicago, and to hold its clauses of exemption, operative and valid as to the transit through the United States. This certainly would be much more opposed to the policy of this country than to adopt the rule contended for and let the Courts or Legislature of each

country settle the law for what is done within its territory. Not only so, but it would involve endless anomalies. If, for example, goods were injured by a negligent collision on the high seas between vessels, sailing respectively from New York and from Liverpool, it would oblige the Court to hold that the owners of the vessel sailing from Liverpool were exempt from liability while the owners of the vessel sailing from New York were liable in damages. The exemption clauses in the New York bill of lading would be rejected, and those in the Liverpool bill sustained.

An exception has been stated to the rule contended for in the First Point which requires consideration. The courts of a country are not bound to enforce a contract which provides for that which is intrinsically wicked (*malum in se*) nor for that which is expressly prohibited by statute (*malum prohibitum*). Judge Story gives as an illustration a contract made in Massachusetts for carrying on the slave trade in Africa.

But even in the case of contracts prohibited by statute, the Courts have held, as has been shown in the case of the usury laws, that if the thing prohibited is not intrinsically wrong, and the place of performance is in another State, the fact of the statutory prohibition in the state where the contract is made, will not affect the validity of the contract.

It cannot for a moment be contended that the contract in question, or the clause, the validity of which is in dispute, is obnoxious to either objection. Indeed without seeking to reargue the validity of such clauses of exemption, the fact that so many courts of great authority have decided in

their favor, shows of itself that the question is not free from doubt.

The argument in favor of the validity of such contracts is as old as the year books. In 2 Henry IV, fol. 18, p. 6, Hull, Justice, says :

"It were against all reason to put blame or fault upon a man where there is none in him, for the negligence of his servants cannot be said to be his own."

The decisions of the English courts and of the courts of Connecticut, Maryland, New Jersey, New York and Vermont present in detail the arguments in support of this proposition. It certainly cannot be maintained that a contract sustained by these decisions is so manifestly wrong and immoral that this Court must condemn it wherever it appears.

It is always dangerous for a Court to undertake to determine public policy. That would seem to be properly the province of the Legislature. It is true that some rules of public policy are so firmly estabished by common consent, that there needs no Legislative declaration to establish them, yet it must be admitted that these rules are few. What may be at one time a wise public policy, under different circumstances and at different times, may cease to be wise, yet no one knows better than a lawyer how difficult it is to induce a Court which has once laid down a rule on the subject to recede from it. What was originally public policy, becomes adjudication and has the force of an adjudication, and sometimes under different circumstances, becomes a public detriment instead of a public benefit.

Some very judicious observations on this subject will be found in the Girard will case, 2 How. U. S., 127; Hollis *vs.* Drew Theol. Sem., 95 N. Y., 166; Kellogg *vs.* Larkin, 3 Chandler (Wis.), 133, 142.

In Hayden *vs.* The Collector, 5 Wallace, 111, this Court says:

"What is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes."

Fifth.

Importance of uniformity in commercial law.

This Court has from the beginning endeavored to produce uniformity in the commercial law of the United States. This is the reason for its determination in Swift *vs.* Tyson, 13 Peters, 1, not to be guided by the decisions of local tribunals on commercial questions. The very reason for the adoption of this rule, to wit, the desirability of uniformity, should lead this Court to follow the English decisions in reference to causes of action, which arise in England, and which certainly in that country would be determined by British law. It would be a matter of profound regret if an action against a British corporation upon a bill of lading, should be determined in one way at Westminster, and in another way at Washington. The right of a party to a defence, or in other words, to preserve a portion of his money from being taken by judicial process, and delivered to another party, is a species of property as sacred as any other. It shocks the common sense of mankind to hold that the title to the same piece of property should be adjudged one

way in America and another way in England. In the celebrated case of Doe *ex dem.* Birtwhistle *vs.* Vardill, 9 Bligh, 72, affg. S. C., 5 B. & C., 428, the House of Lords felt obliged to adjudge that a divorce which the Scotch courts had held to be valid, was void by English law, and consequently held that the title to land in England would descend to a different set of persons from those to whom the personal property, under the judgment of the Scotch courts, would be distributed. But this went to the utmost verge of the law and even here, while the two courts came to different conclusions, these conclusions affected different pieces of property and that of the English court was based on considerations peculiar to the law of real estate. In the case at bar the libellants' contention is to sustain a decision of an American court, which certainly is directly opposed to the British decisions, in a case where the cause of action arose in Great Britain upon a British ship and with reference to a transit which should have terminated at a British port. We do not mean that this particular bill of lading has actually come in judgmentin a British court, but we do insist that the British authorities are so clear on the subject, that if it did come into judgment there, there could be no question what the decision would be.

Woodley *vs.* Michell, 11 Qu. B. Div., 47, 51.

Peek *vs.* N. Staffordshire R. Co., 10 Ho. of Lords Ca., 473.

Sixth.

Law of the Flag.

It is believed that the rule contended for in the First Point is, on the whole, most in accordance with decided cases and with the analogies of the law. But there is a class of cases in which the Courts have held that the law of the nation to which the vessel by which the contract of affreightment is to be performed, belongs, should control and regulate the rights of the parties.

It seems clear that the authority of the master to bind his owners, and to hypothecate or sell the ship or the cargo, is to be governed by the law of the flag in the absence of express authority. The decisions on this subject are placed solely on reasons springing out of the law of agency. For this very reason it would seem that they are equally applicable to the authority of any agent other than the captain, and therefore to the authority of any agent authorized to contract for the shipment of goods on board a particular vessel.

Gaetano and Maria, 7 Prob. Div., 171, reversing S. C. *Ibid.* 1.

Lloyd *vs.* Guibert, L. R. 1 Q. B., 115, affg. S. C. 6 Best & Smith, 100.

The Woodland, 14 Blatchf., 499, affg. S. C. 7 Bened., 110.

The rule on the subject has the great merit of simplicity. A party contracting with an agent of a foreign ship can always ascertain the extent of his authority under the law of that country to which the ship belongs. The British law, and the extent of the authority of the agent of a British ship, are well known in the commercial community.

The question in this case really is whether the contract which this particular agent did make was an authorized and valid contract. So far as it provided for transportation within the limits of the State of New York, that portion of it which provides for exemption from liability for negligence of the carrier's agents will not be enforced in the Federal Courts. But when the Montana sailed from New York, and was upon the high seas, she ceased to be subject to their jurisdiction. The well settled rule in this Court is that a ship on the high seas is to be considered as part of the territory of the nation to which she belongs.

Crapo *vs.* Kelly, 16 Wall., 610, 624.

In this case the Court say:

"We are of the opinion, for the purpose we are considering, that the ship Arctic, was a portion of the territory of Massachusetts, and the assignment by the Insolvent Court of the State, passed the title to her, in the same manner and with the like effect as if she had been physically within the bounds of that State, when the assignment was executed.

"The rule is thus laid down by Mr. Wheaton, in his treatise on International Law: (Eighth edition, *Sect.* 106, *et seq.*) 'Both the public and private vessels of every nation on the high seas, and out of the territorial limits of any other State, are subject to the jurisdiction of the state to which they belong. Vattel says, that the domain of a nation extends to all its just possessions, and by its possessions we are not to understand its territory only, but all the rights it enjoys. And he also considers the vessels of a nation on the high seas as portions of its territory. Grotius holds that sovereignty may be acquired over a portion of the sea.' As an illustration of the proposition that the ship is a portion of the territory of the State, the author proceeds: 'Every State has an incontestable right to the service of all its members in the national defence, but it can give effect to this right only by

lawful means. Its right to reclaim the military service of its citizens can be exercised only within its own territory, or in some place not subject to the jurisdiction of any other nation. The ocean is such a place, and any State may unquestionably there exercise, on board its own vessels, its right of compelling the military or naval services of its subjects.'

"Chancellor Kent, in his Commentaries says: 'The high seas are free and open to all the world, and the laws of every state or nation have there a full and perfect operation upon the persons and property of the citizens or subjects of such a State or nation.' 'No nation has any right or jurisdiction at sea, except it be over the persons of its subjects, in its own public and private vessels; and so far territorial jurisdiction may be conceded as preserved, for the vessels of a nation are in many respects considered as portions of its territory, and persons on board are protected and governed by the law of the country to which the vessel belongs.'

"Wharton says: 'A ship in the open sea is regarded by the law of nations as a part of the territory whose flag such ship carries.' By this (he says) may be explained several cases quoted as establishing the *lex domicilii*, though they are only sustainable on the ground that the ship at sea is part of the territory whose flag she bears. * * * In respect to principle, ships at sea and the property in them, must be viewed as part of the country to which they belong.'

"The modern German law is to the same point. Bluntschli, in his modern Volkerrecht, says: 'Ships are to be regarded as floating sections of the land to which they nationally belong, and whose flag they are entitled to carry.'

"Bischof, in his *Grundriss des positiven internationalen Seerechts*, says: 'Every State is free on the seas, so that its ships are to be regarded as floating sections of its country, *territoria clausa; la continuation ou la prorogation du territoire*, and those on board such ships in foreign waters are under their laws and protection. This even applies to children born to subjects on such ships.'"

The English cases are to the same effect:

In Lloyd *vs.* Guibert, L. R. 1 Q. B., 115-127, the Court said: "For all purposes of jurisdiction, criminal or civil, with respect to all persons and things in transaction on board, she was as it were, a floating island, over which France had as absolute, and for all purposes of peace, as exclusive a sovereignty as over her dominions by land."

The same rule was applied to the case of a child born on a British ship.

Marshall *vs.* Murgatroyd, L. R. 6 Q. B. 31.

Vattel Law of Nations, book 1, chap. six, sec. 216.

Seventh.

The questions thus argued were not passed upon in the Circuit Court. The Circuit Judge held that the law of Great Britain was neither pleaded nor proved, and that the case must therefore be determined by the law of this country. But it is submitted that on this subject the learned Court erred. The clause relied upon in the bill of lading is pleaded, and is alleged to be valid in law. In support of this allegation the claimant offered to read, and did read from the volumes of reported cases, which are the best proof of the British law. This was admissible under the statute of New York, in a district of which State the action was pending.

New York Code of Procedure, § 942.

"The books of reports of cases adjudged in the Courts thereof (of a foreign country) must also be admitted as presumptive evidence of the unwritten or common law thereof."

But this the Court could do independently of Statute.

McDeed *vs.* McDeed, 67 Ill., 545.
Kingsley *vs.* Kingsley, 20, *ibid.* 202.
Penobscot & Kenebec R. R. *vs.* Bartlett, 12 Gray, 244.

In the Scotia, 14 Wall., 170, it was held that a Court of Admiralty would take judicial notice of the various proclamations or decrees by which the maritime powers of the world had united in adopting the sailing-rules.

The Court will remember that a large part of the law merchant, particularly as to bills and notes, originated in the customs of merchants, and that in older cases, parol evidence was given of various customs which the Courts subsequently recognized as law, and of which no further proof was required.

It would seem by analogy that where the foreign law on a particular subject has been frequently brought to the attention of a Court of admiralty jurisdiction, and is perfectly well known to the Court, no formal proof of it should be required.

Eighth.

The decrees appealed from should be reversed and the libels dismissed with costs.

EVERETT P. WHEELER,
Of Counsel for Oceanic Steam Navigation Company (Limited), intervening by leave of Court in support of the appeal.

Office Supreme Court U. S.
FILED.
OCT 15 1887
JAMES H. McKENNEY.
CLERK.

United States Supreme Court,

OCTOBER TERM, 1887.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED), *Appellant* v. THE PHENIX INSURANCE COMPANY.	No. 56.
THE SAME v. THE INSURANCE COMPANY OF NORTH AMERICA.	No. 57.

Brief for Appellee on Motion to Strike from the Record the Papers contained in the Return to the Writ of Certiorari for Diminution of the Record, Filed March 8, 1886.

STATEMENT.

The above causes were brought to this Court by appeals by the respondents below from final decrees of the United

States Circuit Court, for the Eastern District of New York, in favor of the libellants respectively, affirming decrees of the United States District Court for damages to goods insured by libellants and lost by the stranding of the steamship *Montana*, a vessel belonging to the respondents below; the libellants having become subrogated to the rights of the shippers of the goods, whom they had insured.

Record of writ of certiorari and return, filed March 8, 1886, *p.* 2.

The decision of the Hon. SAMUEL BLATCHFORD, Associate Justice of the Court, sitting at the Circuit, was rendered July 31, 1884.

The opinion of the Court, reported in 22 Blatchf., 372, *p.* 397, says:

"No legal distinction can be perceived between goods carried by a common carrier on land, and goods carried by one on the ocean, in respect to this question.

It is urged, however, that the contract here was to be chiefly performed on board of a British vessel, and to be finally completed in Great Britian, and the damage occurred in Great Britian; and that the law of Great Britain, which is asserted to be different from the law here, is applicable to the case. As to this suggestion it is sufficient to say, that the answers expressly admit the jurisdiction of the District Court, asserted in the libels; and that it is not set up, in the answer, that the law of Great Britian, or any other law than that of the forum, is applicable to the case, nor is the law of Great Britain, if it be different, proved as a fact. The case must be decided according to the law of the Federal Courts, as a question of general commercial law."

The statement in the opinon was in exact accordance with the facts.

See the answers of the respondents below, respectively. Recs., pp. 4–7.

After the decision and before the entry of final decrees, the respondents respectively applied to the Circuit Court for leave to amend their answers so as to set up as a new

defence in the action, allegations respecting the law of Great Britain and an alleged exemption given them by such law from the liability claimed by libellants.

The application was opposed by libellants and denied on the grounds stated by the Court in the opinion denying the motion.

Record of certiorari and return, filed March 8, 1886, pp. 11–14.
See the Opinion in 22 Bltchf., p. 399.

The final decrees were entered August 21, 1884 (*Motion papers, p.* 11).

The order denying the motion for leave to amend the answers was filed the same day (*Id.*).

The respondents appealed to this Court and the Clerk of the United States Circuit Court, for the Eastern District of New York, transmitted the record to this Court October 1, 1884 (*Id.*), and it was duly filed October 2, 1884.

In January, 1886, the appellants moved this Court for a writ of *certiorari* for diminution of record, alleging that the papers on application to amend the answers and the order denying same ought to have been transmitted by the clerk of the Circuit Court to this Court as a part of the record on the appeal.

The appellees opposed the motion; it was granted, as appellees' counsel understand, as a matter of course to bring the papers in question before this Court on the return to the *certiorari* (*see affidavit of Mr. Mynderse, p.* 3), and appellees now move to strike from the record in this Court all the papers relating to the application to amend the answers and to the disposition made thereof as they appear and are set forth in the return to the writ of *certiorari.*

In support of the motion we submit the following

POINTS:

First.—This motion is properly made and will be considered by the Court on the return to the writ of *certiorari*.

Ex parte Dugan, 2 Wall., 134.

Second.—These causes were tried in the United States District Court on the pleadings and proofs. The point was made at the trial by the respondents that their liability must be determined by the law of England. The District Judge in his decision held that the undisputed facts showed there was no ground for the contention.

The respondents were thus fully apprized that new allegations and proofs would be necessary if they intended to rely on the defense of the British law.

See Opinion of District Judge Benedict, Rec. p. 9.

Third.—The appeal taken by the respondents from the decree of the District Court to the Circuit Court specifically stated that it intended "to have the cause heard "anew (in the Circuit Court) *on the pleadings and proofs* "in the District Court, and on *other proofs* to be intro- "duced in the said Circuit Court."

The rule regulating appeals from the District Court to the Circuit Court provides, among other things, as follows:

"The appeal shall also state whether it is intended on "the appeal to make new allegations, to pray different "relief, or to seek a new decision on the facts, and the "appellant shall be concluded in this behalf by the appeal "filed."

Rule 4, U. S. Circuit Court, Southern District N. Y.

No new allegations and no new proofs were introduced in the U. S. Circuit Court, and the trial there was on the original pleadings and the proofs in the District Court.

The actions were tried in the Circuit Court without any attempt to amend the answers.

After the decision (July 31, 1884) was rendered, and after the findings of fact and conclusions of law (August 1, 1884) were filed, and on the eve of final decrees, the application (August 21, 1884) was made, and the final decrees were entered (August 21, 1884,) and appeal taken (August 30, 1884), before the entry of the order denying the motion (September 1, 1884).

See Motion Papers, pp. 10, 11.

There is therefore nothing to which the appeal in these cases can relate, except the pleadings, proofs and proceedings in the District and Circuit Courts.

The application to amend the answer was outside of these pleadings, proofs and proceedings; and having been denied, it is not a subject of appeal or review.

Fourth.—The motion to amend was addressed to, and rested wholly in the discretion of the Court, and the order was not appealable to this Court.

Original Answer, Rec. filed Oct. 2, 1884, p. 4.

Petition of Appeal in moving papers of Appellee and the Rec., p. 67.

Fifth.—The respondents appeared generally in the suits and admitted the jurisdiction of the District Court.

They could not, after litigating under this appearance in both the District and Circuit Courts, and after an adverse decision, withdraw or qualify that appearance and invoke a foreign law as the rule of their liability.

Toland v. *Sprague*, 12 Pet., 300.

Harkness v. *Hyde*, 93 U. S., 476.

Maxwell v. *Stewart*, 22 Wall., 77.
Nat. Furnace Co. v. *Moline Works*, 18 Fed. Rep., 863.

Sixth.—There was no pretence that the existence of the law of Great Britain was unknown to respondents at the time of this appearance, or that it was first discovered after the decision of the Circuit Court.

The delay in making the application was also a sufficient ground for a denial of the motion.

Seventh.—There is no provision of law permitting an appeal in Admiralty from an order denying an application addressed to the discretion of the Court, made after the findings of fact and conclusions of law of the Circuit Court have been filed, and no precedent for permitting additions to the record of the character sought to be introduced into the records of these causes. The papers were properly omitted from the record by the clerk.

Rule 8 of this Court, section 6, provides that in Admiralty causes the record "shall be confined to the pleadings, the findings of fact and conclusions of law thereon, the bill of exceptions, the final judgment or decree, and such interlocutory order and decree as may be necessary to a proper review of the case."

Eighth.—The motion should be granted, and all the papers included in the return to the *certiorari* filed March 8, 1886, should be stricken from the record, and an order made that the causes be heard on the transcripts of record filed October 2, 1884.

BUTLFR, STILLMAN & HUBBARD,
Proctors for Appellees.
WILLIAM ALLEN BUTLER,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 56.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED),

Appellant,

vs.

THE PHENIX INSURANCE COMPANY,

Appellee.

No. 57.

THE SAME,

Appellant,

vs.

THE INSURANCE COMPANY OF NORTH AMERICA,

Appellee.

BRIEF FOR APPELLEES.

BUTLER, STILLMAN & HUBBARD,
Proctors for Appellees.

WILLIAM ALLEN BUTLER,
Advocate.

Supreme Court of the United States,

October Term, 1887.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited), *Appellant,* *vs.* THE PHENIX INSURANCE COMPANY. *Appellee.*	No. 56.
THE SAME *vs.* THE INSURANCE COMPANY OF NORTH AMERICA.	No. 57.

BRIEF FOR APPELLEES.

The appeals present the same questions, and this brief is filed in both cases on the assumption that the Court will consider them together, as in *Merchants' Ins. Co.* v. *Allen,* 121 U. S., 67, *p.* 68.

Statement of the Case.

These causes come before this Court on the appeals of the Liverpool and Great Western Steam Company (Limited), from two final decrees of the Circuit Court of the United

States, for the Eastern District of New York, in favor of the appellees respectively, the Phenix Insurance Company and the Insurance Company of North America, both entered as of August, 16, 1884, awarding to the Phenix Insurance Company the sum of $16,542.35, and to the Insurance Company of North America the sum of $37,246.15 for damages (with interest and costs) to cargo shipped on the steamship *Montana*, caused by the stranding of the steamship on the coast of Wales, March 3, 1880, owing to the negligence of the master and officers.

See Final Decrees, Records, p. 65

The several insurance companies, the appellees in this Court, filed their respective libels *in personam*, with clause of foreign attachment, in the U. S. District Court, for the Eastern District of New York, January 27, 1881, against the Liverpool and Great Western Steam Company (Limited), a common carrier of passengers and freight by its line of vessels running between New York and Liverpool, to recover damages to cargo on the *Montana* at the time of the stranding, on which the libellants, as insurers of the shippers, had paid the loss under their respective marine policies, and had thereby become subrogated to the rights of such shippers.

Libels, Recs., pp. 1–3.

Process was duly issued out of the United States District Court in each case, and property of the respondent attached, whereupon the respondent, the Liverpool and Great Western Steam Company, appeared generally in the actions and filed stipulations for value of the attached property.

See Answers, Allegation First, Recs., p. 4.
Petitions of Appeal, Recs., p. 67.

The respondent company answered the libels March 21, 1881, alleging that it had "*duly appeared*" in the actions respectively (*Answer, Records, p.* 4), admitting that it was a corporation existing under the laws of Great Britain and Ireland for the purpose of carrying passengers and cargo, but denying that it was a common carrier (*Id., p.* 4), and

denying all the allegations of the libel charging negligence as the cause of the stranding (*Id.*, *p.* 4). The answers set up in addition as affirmative defenses (1) that under the bills of lading, issued by the respondent as owner of the *Montana*, it was exempt from liability; (2) that the steamer was staunch, properly equipped and manned, and that the stranding and consequent loss and damage to the cargo occurred under the circumstances stated in the answer notwithstanding the exercise of due care and skill on the part of the owners, master and officers of the steamer (*Id.*, *pp.* 5, 6).

The two cases were heard together on the pleadings and proofs in the U. S. District Court, December 8–14, 1882, before Hon. CHARLES L. BENEDICT, District Judge, who on February 19, 1884, made final decrees in favor of the libellants, awarding damages and costs as follows: to the Phenix Insurance Company, $16,063.34, and to the Insurance Company of North America, $36,277.20.

See Opinion of Judge BENEDICT, *Rec.*, *p.* 9,
Decrees, *p.* 14, *p.* 15.
The Montana, 17 Fed. Rep., 377.

The respondents appealed to the U. S. Circuit Court.

A sufficient money deposit was made in each case by the respondent below in the registry of the District Court (afterwards by consent transferred to the Circuit Court) as security and in lieu of a bond on appeal, and the causes were tried anew in the U. S. Circuit Court before Hon. SAMUEL BLATCHFORD, Associate Justice of this Court sitting as Circuit Justice, on the same pleadings and proofs as in the District Court, July 1, 1884.

THE LEADING FACTS ESTABLISHED IN THE CIRCUIT COURT WERE AS FOLLOWS:

1. The Liverpool and Great Western Steam Company (Limited), a corporation existing under the laws of Great Britain, maintained a regular line of steamers for the receipt and carriage of passengers and goods from New

York to Liverpool, commonly known as the "Williams & Guion Line," or the "Guion Line," from the name of the well known shipping house which, as agents, managed the steamers. In this line the *Montana*, an ocean steamer, built of iron and owned by the company, performed regular service "as a common carrier of merchandise and passengers."

Findings of Fact, Recs., p. 39, p. 40.

2. In addition to the usual ship's bill of lading for goods shipped at New York, arrangements were made by the managers of this steamship line for issuing through bills of lading for goods shipped at points in the interior of the United States for transportation to Liverpool. These bills of lading, styled "Overland and Ocean Bill of Lading" or "Foreign Bill of Lading," were intended for delivery to shippers of goods at interior points in the United States for carriage of such goods by rail and steamboat to New York to be there shipped on the steamers of the Williams & Guion Line to Liverpool.

3.—The "Overland and Ocean Bills of Lading" and "Foreign Bills of Lading" were of a two-fold character. They contained two distinct sets of provisions, the first set applicable entirely to the carriage of the goods by land routes in cars and by inland water routes by steamboat, and by connecting lines, from the original point of shipment in the interior to the port of New York, and the second set applicable entirely to the carriage of the goods by sea from the port of New York to Liverpool.

The several bills of lading in evidence, of this character, are contracts of affreightments between the shippers and the railroad company and steamship company respectively, both companies signing by the same agent "severally but not jointly," and they expressly provide for the terms of the carriage by the land carriers separately, with a provision at the end of the contract for the inland transportation that the contract is executed and accomplished, and the liability of the inland carriers thereunder "terminates on the delivery

of the goods to the steamship company at New York, when the liability of the steamship commences and not before." Then follow separate contract provisions applicable solely to the carriage from New York to Liverpool, constituting the steamer's bill of lading with conditions customary in bills of lading for ocean carriage.

See the several "Overland and Ocean Bills of Lading" and "Foreign Bills of Lading," Record No. 56, Exhibits C, p. 50; H. & J., p. 54; Record No. 57, Exhibits C, p. 50; H. & I., p. 54.

4. Under this course of dealing the several shipments were made which are enumerated in the findings of fact in the respective cases, some of the shippers being insured in the Phenix and some in the Insurance Company of North America. The details, in brief, of the shipments and the damage, are as follows:

SHIPPERS INSURED IN THE PHENIX INSURANCE COMPANY (*see Findings, Rec. in No. 56, pp. 19, 20, 21*).

(1.) Ordway, Dudley & Maguire, Merchants of Nashville, Tenn., 300 bales of cotton, owned by Swanson, Porteous & Co., of New York, shipped at Nashville, Tenn., under through bill of lading, Exhibits C, (Record *in No. 56, Addendum to p. 50*), and insured by said owners in the Phenix Insurance Company for $20,000 by policy No. 4031, Exhibit A, (*Id.*, p. 45), under which certificate was issued No. 19,405, Exhibit B (*Id., p. 48*).

These 300 bales arrived at New York and were there shipped in good order on the *Montana* and consigned by Swanson, Cairns & Co. (who had become joint owners with Swanson, Porteous & Co.) to John Reed & Co., of Liverpool, brokers, who acted as agents of the owners in disposing of the cotton and settling the insurance. The 300 bales were damaged by the stranding, and on an adjustment the Phenix Insurance Company paid John Reed & Co., in settlement, in separate payments, an aggregate sum of £1,479 14s. 7d. (*Id., p. 20*).

(2.) *Gilbert, Parkes & Co.*, merchants, of Nashville, Tenn., 150 bales of cotton and 100 other bales of cotton, owned by themselves, shipped at Nashville, under through bills of lading, exhibits H and J (*Record in No. 56, addenda to p. 54*), sold after shipment to Hobart, Smith

& Co. and by them insured in the Phenix Insurance Company for $9,900 on the 150 bales and $6,700 on the 100 bales by Policy No. 1037, Exhibit G (*Id.*, p. 51), under which certificates were issued, Exhibits I and K (*Id.*, *pp.* 54, 55). These 150 and 100 bales arrived at New York and were there shipped ingood order on the *Montana*, consigned to George Frazer, Son & Co., Manchester, England (who had become joint owners with Hobart, Smith & Co. and held the bills of lading and insurance and settled the insurance). Both lots were damaged by the stranding, and in an adjustment the Phenix Insurance Company paid George Frazer, Son & Co. in settlement, in separate sums, an aggregate sum of £1,087 3s. 10d. (*Id.*, *p.* 20).

(3.) Jessie Baxter, of Brooklyn, 22 boxes of bacon and 4 tierces of hams, owned by her and shipped on the *Montana* at New York, in good order by Archibald Baxter, her agent, under bill of lading, Exhibit P (*Rec. in No.* 56, *p.* 61), and insured by him in the Phenix Insurance Company for $1,100 by policy No. 4,156, Exhibit Q (*Id.*, *p.* 58), under which certificate was issued Exhibit O (*Id.*, *p.* 62). These goods were damaged by the stranding, and the bill of lading having been sent forward to Marfel, Jones & Co., of Liverpool, agents and consignees there of Jessie Baxter, they settled for the insurance and on adjustment the Phenix Insurance Company paid them in settlement, in separate payments, an aggregate sum of £151 12s. 7d. (*Id.*, *p.* 21.)

SHIPPERS INSURED IN THE INSURANCE COMPANY OF NORTH AMERICA.

(1.) Logan & Preston, merchants of New York, 16,-190$\frac{13}{100}$ bushels of wheat in bulk and 251$\frac{15}{100}$ bushels of wheat in bags, owned by themselves, and shipped on the *Montana* at New York under bill of lading, Exhibit C, (*Record* in No. 57, *p.* 50), and insured by them in the Insurance Company of North America for $27,500 by policy No. 52,059, Exhibit A, (*Id.*, *p.* 46), and their report thereon, Exhibit B (*Id.*, *p.* 50). This wheat was in part lost and in part damaged by the stranding, and on an abandonment to the insurers the North America Company paid the sum in all of $27,500, on which they subsequently realized as salvage £1,066.15.10 (*Id.*, *p.* 44).

(2.) Jacob Dodd, merchant, of Buffalo, N. Y., 245 boxes of meats, owned by himself and shipped at Buffalo under through bills of lading, Exhibits H and I, (*Record in No.* 57, *addenda to p.*54) and insured by him in the Insurance Company of North America for $9,500, by policy No. 31,024, Exhibit G (*Id., p.* 52), and certificate (*Id., p.* 56). These goods arrived in good order at New York, and were shipped on the *Montana.* The meats having been in part lost and in part damaged by the stranding the Insurance Company paido n a settlement to Watson, Dun & Co., the shipper's consignees and agents at Liverpool, in all £1.477.4.8 on which the insurers subsequently realized as salvage £676.14.1 (*Id., p.* 44).

(3). Samuel B. Jones, general agent for account of Alexander Burgess, a merchant of Nashville, Tenn., 200 bales of cotton, owned by said Burgess, shipped at Nashville, Tenn., under through bill of lading, Exhibit N (Record in No. 57, *p.* 62), and insured by said Burgess for $13,500 in the Insurance Company of North America by Policy No. 51,123, Exhibit L (*Id., p.* 58), and Certificate, Exhibit N (*Id., p.* 61). These 200 bales of cotto narrived at New York and were there shipped, in good order, on the *Montana.* The cotton was partly lost and partly damaged by the stranding. Messrs. Branker, Boxwell & Co., of Liverpool, consignees and factors for Alexander Burgess, settled with the insurers for the loss and damage, receiving in all £431.16.10., on which insurers subsequently realized as salvage £157.19.6. (*Id., p,* 45).

5. The insurance in each case and by both insurance companies respectively were all against perils of the sea and were for the value of the several subjects of insurance, and the several items of loss and damage were duly settled and adjusted, and the amounts due to the libellants respectively were duly ascertained by the United States Commissioner and reported to the Court (*Recs., pp.* 21, 22, 45).

The Circuit Justice rendered his decision in both causes (*see Opinion of* Associate Justice BLATCHFORD, *Recs., p.* 22, *p.* 23), and made his findings of facts and conclusions of law in favor of the libellants, and the same were filed July 31, 1884 (*Recs., pp.* 16–21), and final decrees were entered

August 16, 1884, awarding to libellants respectively the sums ascertained and found due in the District Court, with interest and costs in the Circuit Court, as follows: to the Phenix Insurance Company the sum of $16,542.35 (*Rec., p.* 65), and to the Insurance Company of North America $37,246.15 (*Recs., p.* 65).

Exceptions were filed by the respondent below to the conclusions of law found by the Circuit Court, and also to the refusal of the Court to find certain proposed conclusions of law.

Exceptions, Recs., p. 31, *p.* 32.

Petitions of appeal to this Court were filed by the respondent below in each case August 30, 1884.

N. B.—By mistake the petition of appeal and bond on appeal in the case of the Phenix Insurance Company (No. 56) *have been printed in the record in the case of the Insurance Company of North America (No.* 57), *and the same papers in the last-named case have been printed in the case of the Phenix Insurance Company, and they are thus transposed. The petition and bond in No.* 56 *will be found on pages* 67–70 *in No.* 57, *and those in No.* 57 *will be found on pages* 67–70 *in No.* 56.

PROCEEDING SSUBSEQUENT TO THE DECISION IN THE CIRCUIT COURT.

After the decision of the Circuit Court, and before the petitions of appeal were filed, an application was made by the respondent for leave to amend the answer in each case, and to set up and prove the law of Great Britain as a defense in the actions. This application was opposed by the libellants, and after argument and advisement was denied by the Court.

The papers and proceedings in this application to amend were not included in the transcript of the record and proceedings certified by the clerk of the Circuit Court to this Court.

The respondent then applied to this Court for a writ of *certiorari* for diminution of the record requiring the clerk of the Circuit Court to certify to this Court the papers and proceedings on such application, and the return of said clerk to such writ contains the motion papers and the opinion and order of the Court denying the same.

See Return to Writ of Certiorari, filed March 8, 1886.

The appellees moved this Court on October 17, 1887, on notice and on affidavits, to strike from the record the papers so returned under the writ of *certiorari*, and this motion was ordered to stand over for hearing when the causes should be heard in their order on the docket.

A more particular statement of the proceedings relating to the application for leave to amend is contained in the appellee's brief on the motion to strike out the papers, to which brief, filed October 15, 1887, the appellees respectfully refer.

These cases are reported in 22 Blatchford, 372, where the opinions of the Circuit Court will be found both as to the main issues and the application for leave to amend the answers and produce new proofs.

POINTS.

First Point.—It is conclusively established and determined in these cases that the stranding of the *Montana* and the consequent loss and damage to her cargo were the direct result of the negligence of the master and officers of the steamer.

This was so found by the Circuit Court as a conclusion of law from the findings of fact in the cases respectively.

Findings of fact and conclusions of law. Rec. in No. 56, pp. 16–21, in No. 57, pp. 17–22.

There is no exception to the findings of fact, or to the refusal of the Circuit Court to find any of the proposed findings of fact submitted and requested by the respondents below. The exceptions all relate to the conclusions of law as found and to the refusals of the Court to find the respondents' proposed conclusions of law respectively.

See the exceptions, Rec. No. 56, pp. 31, 32, No. 57, pp. 32, 33.

The facts as found abundantly sustain the conclusion of law that the stranding and the resulting loss and damage were due to the negligence of the master and officers of the *Montana*. This precludes a re-trial in this Court and fully establishes the cause of action in both the suits.

The Abbotsford, 98 U. S., 440.
The Benefactor, 102 U. S., 214.
The Adriatic, 103 U. S., 730.
The Annie Lindsley, 104 U. S., 187.
Merchants' Ins. Co. v. Allen, 121 U. S., 67.

The discussion of the evidence on the question of negligence by the learned District Judge (*Opinion*, Recs., pp. 10–15) and the review of his decision in the opinion of the Circuit Court (*Id.*, pp. 27, 28) cover the whole case and are conclusive as to the fact that the negligence of the master and officers of the *Montana* was the cause of the stranding.

The Montana, 17 *Fed. Rep.*, 377, *S. C.*, 22 *Bltchf.*, 372.

Second Point.—The sole question before this Court on the records in these causes is whether on the pleadings, proofs and proceedings there is any error in the conclusions of law of the Circuit Court.

As the cases stand (irrespective of the appellant's motion to amend the answers and to give new proofs), there is no question here as to the applicability of the statutes or

laws of Great Britain. This foreign law cannot be invoked by the appellants. Their application to amend the answers and to give proof of the statutes and laws of Great Britain concedes that the question so sought to be raised by new pleadings and proofs was not in these cases in the Courts below; is not in them here, and cannot be imported into them unless this Court shall reverse the order of the Circuit Court denying the motion to amend the answers, and for leave to take new proofs.

This is the plain result of the course of procedure below.

The District Court had undoubted jurisdiction of the subject matter of the several actions.

The libellants below were severally corporations, created by laws of States of the United States. The Phenix Insurance Company is a New York corporation, and the Insurance Company of North America a Pennsylvania corporation (*Recs.*, *p.* 1).

The respondent below was a foreign corporation, carrying on business in the United States, and upon the service of the writ of attachment and the seizure of its property thereunder in the State of New York, had full notice of the suits and claims and full opportunity of electing to appear and submit the matter in controversy to the District Court, or to object to the jurisdiction on any ground available to it.

It chose voluntarily to appear in the actions, and to appear generally without any reservation or qualification. It could not therefore afterwards at any stage of the proceedings, object or except to the jurisdiction.

Shields v. *Thomas*, 18 How., 253.
McCormick v. *Penn. Central R. R. Co.*, 49 N. Y., 303.
Pennoyer v. *Neff*, 95 *U. S.*, 714.
Nat. Furnace Co. v. *Moline Works*, 18 Fed. Rep., 863.
New Orleans v. *Houston*, 119 U. S., 265.

The respondent below could have set up in its answers the provisions of any law of Great Britain which it chose

to allege. Unless such law was specially pleaded, the claim could not be made that the issue joined in the action should be tried or determined by the law of a foreign country and not by the law of the Court in which the respondent voluntarily appeared and answered to the merits. The answers, as interposed and verified by the agent of the respondent, alleged that it had duly appeared in the actions (*Answers, Recs., p.* 4), denied the charge of negligence as the cause of damage to the cargo, and set up an exemption from liability by the terms of its contracts of affreightment, but did not claim or allege exception under any provision of the law of Great Britain (*Id., pp.* 4–7). Nor did the respondent, at either trial in the District and Circuit Courts, offer proof of any such law.

The rule is settled that, unless duly pleaded and proved, the law of a foreign country cannot be availed of as a defense.

Monroe v. *Douglass*, 5 N. Y., 447.

In the case last cited the Court say, p. 452: "It is a "well settled rule, founded on reason and authority, that "the *lex fori*, or, in other words, the law of the country "to whose courts a party appeals for redress, furnishes, in "all cases, *prima facie*, the rule of decision, and if either "party wishes the benefit of a different rule or law, as, "for instance, the *lex domicilii*, *lex loci contractus*, or *lex* "*rei sitæ*, he must aver and prove it. The courts of a "country are presumed to be acquainted only with their "own laws; those of other countries are to be averred and "proved like other facts of which courts do not take judi- "cial notice; and the mode of proving them, whether they "be written or unwritten, has long been established.

Hull v. *Mitcheson*, 64 N. Y., 639.
Chapin v. *Dobson*. 78 N. Y., 74, 79.
The Scotland, 105 U. S., 24, p. 29.

The suggestion that a different rule of decision, or a different statutory provision, would be applicable to these cases if they had been tried in a court of the State of New

York, or in a court in Great Britain, instead of a Federal Court, does not bring into the case the question sought to be raised in the absence of proof as to the particular law the appellants desire to invoke. In the absence of any averment by way of pleading, or of any proof as to the foreign law, the issue must be tried and determined according to the record and the law of the forum in which it has been joined.

In the *Scotland* (*ut supra*) this Court say: "If a collision "should occur in British waters, at least between British "ships, and the injured party should seek relief in our "courts, we would administer justice according to the "British law, so far as the rights and liabilities of the "parties were concerned, *provided it were shown what* "*that law was. If not shown*, we would apply our own "law to the case."

The respondent below was fully apprised by the decision of the District Judge (*Opinion, Rec., p.* 11), that on the facts as they stood there was no ground for claiming the benefit of any foreign law.

But neither in the District Court nor in the Circuit Court where there was full opportunity of making new allegations and proofs was any attempt made to plead or prove the British law.

The question as to the effect of the British law on the rights of the parties to these actions cannot therefore be raised on this appeal. No error can be found in the record of the trials below on the present pleadings and proofs for any ruling or decision relating to the foreign law.

The remarks of the learned associate Justice of this Court on this subject cover the whole ground. He says (22 Bltchf., 372, p. 397):

"It is urged, however, that the contract here was to be chiefly performed on board of a British vessel, and to be finally completed in Great Britain, and the damage occurred in Great Britain; and that the law of Great Britain, which is asserted to be different from the law here, is applicable to the case. As to this suggestion it is sufficient to say, that the answers expressly admit the jurisdiction

of the District Court, asserted in the libels; and that it is not set up, in the answer, that the law of Great Britain, or any other law than that of the forum is applicable to the case, nor is the law of Great Britain, if it be different, proved as a fact. The case must be decided according to the law of the Federal Courts, as a question of general commercial law."

There is no ground for the statement that any attempt was made at either trial, in the District or Circuit Court, to prove the law of England by reading from adjudged cases. The reference in the briefs, at the trials, to English authorities did not make the cases cited evidence of the law of Great Britain, and there is nothing in the record to show that even in argument any English law was before the Court.

It is therefore not only inconclusive, but wholly out of place, misleading and irrelevant to claim anything from the custom of Courts of Admiralty to accept the reports of adjudged cases in foreign tribunals as evidence of the law of foreign countries. There is not the slightest warrant for the assumption that any claim was ever made in these actions that the English law had been put in evidence as proof of a defense.

The respondent's counsel, in argument after the proofs were all in, attempted to raise the defense.

The attempt was met in both the District and Circuit Courts by the ruling that neither the pleadings nor the proofs had laid any foundation for the claim that a foreign law should be applied (*Recs., pp.* 9.30).

There was no error in the ruling.

The ground of error claimed in one of the several briefs in aid of the appeal in this Court is thus stated: "The claimant offered to read, and did read, from the volumes of reported cases, which are the best proof of the English law" (*Brief of Counsel for Oceanic Steam Navigation Company, Limited. p.* 18).

This statement is wholly without support in the record, and seems to be an abuse of the privilege accorded to the intervening counsel. The appellant's brief ventures no such assertion. On the contrary, appellant's counsel, Mr. Wilcox, in his affidavit (*Return to Certiorari, p.* 3) correctly says that "*no proof of the said law*" (*i. e.*,

the law of Great Britain) "*has been made*," and he proceeds to say that this was because he understood that the same was recognized by libellants, and formal proof would not be required, and that "allusion" was made to British statutes and reports on the argument, but he has the candor to admit that the libellants made the point that no proof of the British law had been offered, and that the Court held the point well taken.

In appellant's supplemental brief it is claimed (*p.* 14) that this Court will take judicial cognizance of the law of England, and the case of *Lamar* v. *Micou*, 112 U. S. 452; S. C., 114 Id., 218, is cited as sustaining the proposition. But this case only declares the well-settled rule that the Courts of the United States are bound to take judicial notice, without plea or proof, of the law of any State of the Union. The rule is wholly inapplicable to the law of a foreign country. This must be proved.

Ennis v. *Smith*, 14 How., 400.
Pierce v. *Indseth*, 106 U. S., 546.

As these cases stand the British law is therefore not in them by way of evidence, and is not recognizable by this Court.

Besides, there is nothing to show what statute regulating or limiting the liability of ocean carriers or what rule of law the appellants invoke; or whether, or to what extent, they had or have not complied with the requirements of any such statute or rule of law; or whether, in fact, they would have been enabled, under the circumstances of the stranding and loss, to have taken the benefit of such statutes or rules.

This Court certainly will not assume any facts which are not proved, and the appellant's case must be determined by the record, which is bare of any evidence, or offer of evidence, as to the statute law or the customary law of England.

Third Point.—Jurisdiction in the Courts below being undoubted, both as to subject matter and as to the person of the respondent by its voluntary appearance, there is no ground for the claim that any other law than that administered by the Federal Courts is to be applied in these causes, even if the British law had been pleaded and proved.

The LEX FORI must govern.

The bills of lading issued to the several shippers were not contracts dependent for their validity, as respects the rights or liabilities created by them, upon any particular law. They were contracts made in the United States and with citizens of the United States and equally valid by the laws of England, of New York, of the United States, and of each State of the United States. The case therefore is not within the principle of the cases in which the courts have held that recourse cannot be had to the law of the forum of a foreign country to enforce liens or create obligations on the part of owners of vessels not recognized by the laws of their domicile, and therefore beyond the *power or authority of the master.*

See Pope v. *Nickerson*, 3 Story, 465.
Lloyd v. *Guibert*, 6 Best & Smith, 100, followed in
The Woodland, 14 Bltchf., 499.

Here the bills of lading contained provisions lawful everywhere, and there is nothing in their terms or in the situation of the parties to prevent this Court from giving to those terms and provisions the effect which by the repeated adjudications of this Court belongs to them. The question relates to the remedy and the law of the forum in which the remedy is sought, and to which the respondent has submitted. It might as well have been claimed in the case of *Railroad Company* vs. *Lockwood*, 17 Wall., 357, that because the contract and the transaction were in New York, the law of the State of New York was binding on the Federal Court. The precise point adjudged in that case was that the Federal Court would not, in ad-

ministering the commercial law, give to the stipulation of bills of lading exempting carriers from liability for their own negligence, as broad an application as the Courts of New York would give, and the whole question there, as here, was as to the effect of the contract in the court before which the parties were voluntarily impleaded.

Of all the numerous cases cited by the appellant's counsel, and in the briefs filed in aid of the appeal, no one will be found asserting the doctrine that a liability which springs, not from local law or regulation, but from a contract obligation, recognized as valid the world over, cannot be enforced according to the law of any forum having jurisdiction of its subject matter, in which the respective parties have voluntarily appeared and joined issue on the merits without claiming that the law of any other forum should govern their contention.

If the law merchant is to govern, the presumption is that the parties contracted with reference to the law of the place where the contract was made. This presumption may be overthrown by proof showing that the parties intended it to be governed as to its validity, motive, obligation, or interpretation by the law of the place of its performance, or as Lord MANSFIELD expressed it: "where the transaction is entered into with an express "view to the law of another country as the rule by which "it is to be governed."

Story's Conf. of Laws, 242, *p.* 280.

In the case at bar there is nothing in the circumstances, in the acts of the parties, or in the terms of the contracts to overcome the presumption that the law of the place where the contracts were made is to govern them. The carriage for which they provide, was to be partly within the United States, and partly on the high seas. The provisions of the bills of lading, both those which related to the inland transportation, and those which related to the ocean transportation, were the customary stipulations of such documents, and contained nothing which was peculiar to the law of England, or which indicated an intention that the parties had in view, any reference to that law. If the steamship

company had desired to secure any protection or exemption from liability under British laws, it could have so stipulated in the contract for ocean carriage. This was done by the steamship owners in the case of the *Oranmore*, 24 Fed. Rep., 922, where the contract contained an express provision that "any question arising under this contract or the bill of lading against the steamer or her owners, shall be determined by the English law in England." This was held binding on the parties, because conclusive as to their intent (*p.* 928).

But here, besides the absence of anything in the contracts or their surrounding circumstances, to disturb the rule which makes the law of the place of contract controlling, there is the decisive fact that the steamship owners, when called upon to respond in damages for the negligence which constitutes the causes of action in these cases did not invoke the British law, either by any proceeding in England to secure the benefit of its provisions or by any plea or proceeding in the District or Circuit courts of the United States in the suits as brought. Instead of so doing they voluntarily appeared and contested in these courts, and thereby excluded any presumption that at the time of making the contracts there was, on their part, an intention that in case of liability or claim for damage for a breach of the contract they were to have the benefit of British law.

This identical question arose in the case of the *Brantford City*, 29 Fed. Rep., 373, and was discussed by the learned District Judge of the Southern District of New York in an exhaustive review of the authorities. He held that a British steamer, receiving goods at Boston under bills of lading issued there for carriage to Hartlepool, England, could not, in an action in the United States District Court for damages resulting from the established negligence of the master, claim exemption under the British law. The same grounds were urged before him as those now insisted on, *and the British law was both pleaded and proved.* He rejected the claim of the steamship owners, and held that the law of this country, as administered by the Federal Courts, must govern; that there was no intent of the

parties to the bill of lading to have it governed by any other law than that of the place where it was made (p. 387), and said (p. 395):

"Nothing could be more unequal or prejudicial to our "own citizens, or more suicidal in national policy, than to "uphold, in favor of foreign ships, stipulations, as "respects carriage here or upon the high seas, which, "when made by our own carriers, we declare to be "against public policy, extortionate, and void. As re- "spects such stipulations, foreign ships cannot stand on "any different footing from our own, nor can a foreign "law be suffered to subvert our own law to the prejudice "of our own ships. No comity demands this."

The claim that in Admiralty a different rule exists, and that parties may take all the risks of litigating on the facts and of availing of every defense which the law of the forum permits on the instance side of the Court and by appeal and re-trial in the Circuit Court and then, after a final adverse adjudication on both facts and law, insist that the cause shall be determined according to a foreign law, not pleaded or proved, is not supported by reason or authority.

The supposed flexibility of the Admiralty proceedings cannot be strained so as to admit parties to change the nature of their defense after final decree and begin *de novo* on a new basis of controversy.

Fourth Point.—The Circuit Court correctly held that the stranding of the *Montana* and the consequent damage to her cargo having been the direct result of the negligence of the master and officers of the steamer, the respondent is liable therefor (*Recs.*, *p.* 99), notwithstanding the stipulations in the several bills of lading exempting the vessel and owners from such liability.

It is the settled law of the Federal Courts that where the negligence of a carrier or his servants is the direct cause of loss or damage to the goods in his charge for transportation, he is liable in damages notwithstanding

any stipulation in the contract of affreightment exempting him from such liability. Such a stipulation is unreasonable and contrary to public policy, and therefore void.

N. J. Steam Navigation Co. v. *Merchants' Bank*, 6 How., 344, *p.* 383.
Railroad Company v. *Manufacturing Co.*, 16 Wall., 318.
Railroad Company v. *Lockwood*, 17 Wall., 357.
Railroad Company v. *Pratt*, 22 Wall., 123, *p.* 134.
Bank of Kentucky v. *Adams Express Co.*, 93 U. S., 174.
Railroad Company v. *Stevens*, 95 U. S., 655.
Phœnix Insurance Co. v. *Erie Transportation Co.*, 117 U. S., 312, *p.* 322.
York Co. v. *Central R. R. Co.*, 3 Wall, 107.
Express Co. v. *Caldwell*, 21 Wall, 264.

The bills of lading, Exhibits C, H, J and P, in the case of the Phenix Insurance Company, *Recs.*, *pp.* 50, 54, 55 and 61, and Exhibits C, H, I and N, in the case of the Insurance Company of North America, *Recs.*, *pp.* 50, 55 and 62, all contain stipulations which, by their express terms, varying somewhat in the language used, exempt the carriers from loss by any peril of the sea, including stranding, whether arising from the negligence, default or error in judgment of the master, mariners, engineers or crew, or otherwise. But under the rule already stated, and enforced in the several adjudged cases above cited, these several stipulations are void and of no effect.

Fifth Point.—The liability of a common carrier attached to the steamship company, the respondent below, and the rule in respect to negligence, as established by this Court, applies in this case. The distinction attempted to be made by the appellant between the liability of land carriers and ocean carriers is untenable.

The respondent below was the owner of steamers maintaining a regular line between Liverpool and New York, of which the *Montana* was one, for the carriage of freight and passengers.

The Circuit Court found, as a fact, that by her and by other ships the respondent was "a common carrier."

Findings of Facts, Rec. p. 40.

There is no exception to this finding and the facts support it.

The whole argument on the part of the appellant founded on a supposed distinction between the liability of common carriers by rail, or other means of land transportation, and sea going vessels, is without any basis of fact.

It is settled law that the owner of a general ship is a common carrier.

Parsons says:

"The true rule undoubtedly is that one who carries by "water in the same way and on the same terms as a "common carrier by land is also a common carrier; or in "other words it is not the *land* or the *water* which deter- "mines whether a carrier of goods is a common carrier, "but other considerations which are the same in both "cases."

1 *Parsons on Maritime Law*, 173.

The same rule is laid down in *Story on Bailments*, § 501, and in *Angell on Carriers*, § 89.

In *Nugent v. Smith*, L. R., 1 C. P. D., 423, which was an action for damages for loss of property shipped on a steamship belonging to a line of steamers plying between two ports, Lord COCKBURN says that the vessel was "one "of a line of steamers plying habitually between given "ports, and carrying the goods of all comers as a general "ship," and that "from this it necessarily follows that the "owners were common carriers." He discusses the rule of liability applicable to carriers by sea, and shows that while in the case of a private vessel carrying goods under a special arrangement a different rule might apply, it is un-

questionable that in the case of a general ship the law of England imposes the same liability upon a carrier by sea as upon common carriers on land (*pp.* 427-435).

In the case of *Railroad Co.* v. *Lockwood*, while the question of liability for negligence arose upon a contract for land carriage, the decision was placed upon grounds which are equally applicable to ocean carriage. It laid down the principle that it is not just nor reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants. The reasoning and the conclusions of the Court are equally in point with reference to carriers by sea as by land. In fact, the case of a carrier plying a vessel between two seaports is instanced by the Court in enforcing the principle, and the same result is reached as that stated by Lord Cockburn in *Nugent* v. *Smith*. The Court say:

"A common carrier may, undoubtedly, become a private "carrier, or a bailee for hire, when, as a matter of ac- "commodation or special engagement, he undertakes to "carry something which it is not his business to carry. "For example, if a carrier of produce running a truck "boat between New York City and Norfolk should be re- "quested to carry a keg of specie or a load of expensive "furniture, which he could justly refuse to take, such "agreement might be made in reference to his taking and "carrying the same as the parties chose to make, not in- "volving any stipulation contrary to law or public policy. "But when a carrier has a regularly established business "for carrying all or certain articles, and especially if that "carrier be a corporation created for the purpose of the "carrying trade and the carriage of the articles is em- "braced within the scope of its chartered powers, it is a "common carrier, and a special contract about its re- "sponsibilities does not divest it of the character" (*p.* 377).

In the supplemental brief filed by the appellant, the case of *Hart* v. *The Penn Co.*, 112 U. S., 342, is relied on as qualifying the rule in *Railroad Co.* v. *Lockwood* by permitting a stipulation on a bill of lading, limiting the carrier's liability to a portion of the loss. And it is argued that if the carrier may lawfully limit his liability for a

part, he may for the whole. But the Court expressly excluded any such deduction by reaffirming the doctrine of *Railroad Co.* v. *Lockwood* in its integrity and placing the decision on the express ground that the stipulation related only to an agreed valuation in case of loss, and not to an exemption from liability for loss by negligence (*pp.* 338–343).

The rule as established by this Court, has been repeatedly applied in the Circuit and District Courts to contracts of affreighment by owners of vessels.

The City of Norwich, 3 Ben., 575.
Nelson v. *Nat. S. S. Co.*, 7 *Id.*, 341.
The Colon, 8 *Id.*, 354.
The Hindoo, 1 Fed. Rep., 627.
The Powhatan, 5 *Id.*, 376.
S. C., 12 *Id.*, 876.
Sun Mu. Ins. Co. v. *Miss. Valley Transp. Co.*, 14 Fed. Rep., 699.
The Hadji, 22 Bltchf., 235.
The Brantford City, 29 Fed. Rep., 373.

Appellants' counsel, in attempting to make a distinction between land carriers and carriers by water assume that the responsibilities of the common carrier have been imposed upon him in exchange for valuable franchises given him by the public, and they refer to the railroad monopolies of this country.

But the law establishing the responsibilities of a common carrier is too old to aid this argument. It was applied in its extremest severity long before railroads were known; before franchises were granted to corporations by the public; before there were any giant monopolies.

The common carrier was more strictly held when his liabilities were first established by law and when he had no franchises from the public than he is now held. The responsibilities put upon him by the law were because he offered himself as a public servant, not because he solicited and acquired franchises. And now private carriers are under the same responsibilities as carriers holding franchises from the public.

Sixth Point.—The appellant's claim that although it is a common carrier, responsible by the law of the forum in which it has voluntarily appeared and contested its liability to respond for its own negligence and that of its servants, yet this Court should give it the benefit of immunity and exemption under alleged British law.

This claim is earnestly pressed in the brief of appellant and in other briefs submitted by leave of the Court on the apparent supposition that some general calamity will overtake the numerous corporations which exclusively enjoy the carrying trade between New York and Liverpool if the decrees in these causes are affirmed.

In the same breath in which they allege that the law of Great Britain will afford them ample protection against liability, they ask this Court in a case in which that law is not before them and was not pleaded or proved, and in which the decision will not therefore affect any right or interest other than that of the private suitors here impleaded to administer the British law for the benefit of strangers to the record so as to establish a general and uniform rule of exemption for British ocean carriers in advance of any necessity, so far as such strangers are concerned.

It is, perhaps, a sufficient answer to these intervening parties to suggest that their rights are not at all in jeopardy in the present contention.

But if the claim is to be considered, either on behalf of the appellant or their allies the other British steamship companies, we submit the following views:

I. The whole subject of the liability of common carriers on land and sea is matter of regulation, partly by local statute and partly by commercial law. The statutes of commercial countries and states differ in their provisions; the contracts of affreightment between owners of goods and common carriers differ in their stipulations, and the rules of commercial law differ in their application by the courts. The English statutes limiting the liability of shipowners vary essentially from the statutes of the United States on the same subject, and, after full deliberation, the rule of law applied by the Federal courts in cases of negli-

gence by common carriers is a different rule from that applied in some of the State courts and in the courts of England.

II. The common carrier while accepting the benefit of statutory exemptions seeks also to shield himself from liability in case of loss or damage to the goods in his charge by stipulations in the bill of lading. Such stipulations are necessarily subject to the provisions of the statutes governing the contracting parties and to the rules of commercial law applicable to the contract.

III. Both on the statutory side and the contract side the carrier has adequate protection. The acts of Parliament in England giving exemption in the cases for which they provide and our own statutes are in mitigation of the rigor of the common law rule, and are liberally construed.

Walker v. *The Transportation Co.*, 3 Wall., 150, *p.* 152.
Moore v. *The American Transportation Co.*, 24 How., 1.
The City of Norwich, 13 Wall., 104.
The Benefactor, 103 U. S., 239.

By contract stipulation the carrier can not only insure against the consequences of his own negligence, but he can agree with the owner or shipper of the goods to have the benefit of any insurance effected by such owner or shipper, even where his negligence is the cause of the loss.

Phœnix Ins. Co. v. *Erie & W. Transportation Co.*, 117 U. S., 312.

If it be argued that he should also be permitted to contract directly with the owner or shipper against any liability arising from his own negligence, the answer is that the whole matter of exemption by stipulation in the bill of lading rests in contract, subject to the rules of law.

Thus while the carrier may agree with the owner or shipper for the benefit of his insurance, the insurer may by a prior agreement with the owner or shipper provide that no such stipulation with the carrier shall defeat the insurer's right of subrogation. (*Carstairs* v. *Mechanics and Traders' Ins. Co.*, 18 Fed. Rep., 473.) The underwriter may require a premium for insuring against the risk of the carrier's negligence far greater than the rate of freight charged by the carrier for the transportation of the goods, and the contracts of freight and of insurance stand on different considerations.

The contract right of the carrier to procure insurance against the risk of his own negligence has no effect upon the rule of his liability as carrier, except to emphasize the fact that he is always at liberty to secure indemnity, and thereby practical exemption if he is willing to pay for it.

The decision of this Court in *Phœnix Ins. Co.* v. *Erie & W. Transportation*, 117 U. S., 312, sustains the rule that a carrier may insure against his own negligence and that of his servants. Hence it is argued (*Appellant's Supplemental Brief, p.* 16), that a common carrier "is not obliged to take the risk of the negligence of his servants" and be his own insurer, and that he may also "require as "a condition of taking cargo that the shipper, if he wants "to cover that risk, shall himself do so in the same way." The latter remark is wholly unsupported by authority. No such requirement can be lawfully made by a common carrier as a condition of taking cargo. He can stipulate as to what contract right he shall have in the shipper's insurance, if it exist, but he cannot force the shipper to pay for insurance as well as freight, and nothing in the Phœnix Insurance Company case supports such a contention. Insurance and the rights of the respective parties interested in it, rests wholly on the contracts they make. The rights and duties of the carrier are wholly unaffected by such contracts. He is just as much bound to safe carriage of uninsured property as of property covered by the most ample insurance.

IV. The construction of the contract actually made, is

matter of general law. This has been expressly held by the Court in

Myrick v. *Michigan Central Railroad Co.*, 107 U. S., 102.

The Court say (p. 109):

"What constitutes a contract of carriage is "not a question of local law. * * * It is a matter of "general law, upon which this Court will exercise its own "judgment. *Chicago City* v. *Robbins*, 2 *Black*, 418; "*Railroad Co.* v. *National Bank*, 102 *U. S.*, 14; *Hough* "v. *Railway Co.*, 100 *Id.*, 213."

In the same case this Court define the transaction to which the contract in the bill of lading applies as "the "reception of goods marked for a place beyond the road "of the company" (p. 110) and point out the impracticability of applying to it any other rule of law than that administered by this Court. It was held that under the facts in the case the liability imposed by the common law did not attach to the carrier beyond the safe transportation of the goods over its own line, and that the general law, as enforced by this Court, must govern notwithstanding differing decisions in the State Courts.

Here the established rule of this Court equally applies, and as the parties have made no stipulation that the law of any state, country, or flag shall govern their contract, there is no consideration upon which the Court should extend to the appellant an exemption which it has repeatedly held to be unjust and unreasonable, and which it could only apply by an abdication of its own authority in the sphere of the commercial law.

V. The claim that the particular stipulations in the *Montana's* bills of lading were just and reasonable, and the English cases cited in support of the claim are inapplicable so long as this Court shall adhere to the rule it has solemnly declared and reiterated, and which has thus become an integral part of the general commercial law as administered by the Federal Courts.

Seventh Point.—The Circuit Court correctly held that the libellants were duly subrogated to the rights of the insured against the carrier for the loss and damage to the cargo insured by them (*Recs.*, *p.* 44).

The insurance companies as insurers of the owners of cargo on the *Montana* against marine risks, including the risk of stranding, having under the provisions of their respective contracts of insurance, made good the loss and damage to the insured, thereupon became duly subrogated to the rights of the insured against the carriers, and were entitled to maintain these action to recover the amount of the loss or damage which they have paid as such insurers. The payment by the insurers worked an equitable assignment to them of all the rights which the insured had against the carrier.

Phillips on Ins., sec. 1723.
Home Ins. Co. v. *Western Transportation Co.*, 4 Robt., 257.
Hall v. *Railroad Companies*, 13 Wall., 367, *p.* 370, *p.* 373.
The Potomac, 105 U. S., 630.
Mobile and Montgomery Insurance Co. v. *Inrey*, 111 U. S., 584.
Phœnix Ins. Co. v. *Erie Transportation Co.*, 117 U. S., 312, *p.* 320.

And in admiralty the suit is properly maintained by the underwriter in his own name.

The Monticello, 17 How., 152.
Garrison v. *Memphis Ins. Co.*, 19 How., 312, *p.* 317.
The Frank G. Fowler, 8 Fed. R., 360.
Dunham v. *N. E. Mutual Ins. Co.*, 1 Lowell, 253, *p.* 253.

The undisputed facts, as found by the Circuit Court, show that in respect to each of the several shipments, the details of which are given in the statement of the case (*see supra in this brief, pp.* 5–7), the libellants paid the loss

under their policies upon careful adjustment and settlement, and by such payments became entitled to the rights of the insured.

The contracts contained in the bills of lading relating to the ocean carriage of the goods from New York to Liverpool do not include any stipulation giving the carrier the benefit of insurance effected by the shippers on the cargo.

The through bills of lading contain, among the stipulations which apply exclusively to the transportation from the interior points to New York, by rail and steamboat, a provision that the carrier in having the custody of the goods when any damage is sustained for which he shall be answerable shall have the benefit of any insurance that may have been effected upon or on account of said goods (Exhibits *C*, *Rec. in No.* 56, *p.* 50; *H*, *Id.*, *p.* 54; *I.*; *Id.*, *p.* 55; *Exhibits H*, *Id.*, *p.*5; I. *Id.*, *p.* 55).

This provision giving the carrier the benefit of shippers' insurance does not appear in either of the bills of lading for goods shipped at New York (Exhibit P, *Rec. in No.* 56, *p.* 61; *Exhibit C*, *No.* 57, *p.* 50, N., *p.* 62).

It is doubtless competent for the carrier to insure against loss occasioned by his own negligence, and to agree with the shippers that any insurance which such shipper may have effected on the goods shall enure to his benefit, even where his own negligence has caused the loss, thereby defeating the insurer's right of subrogation where there is no contravening stipulation in the policy and no bad faith on the part of the shipper in procuring the insurance. This is understood to be the effect of the decision of this Court in *Phœnix Insurance Co.* v. *Erie and Western Transportation Co.*, 117 U. S., 312.

But such a contract between the carrier and shipper in order to limit the right of subrogation of the insurer must be clearly expressed and established by competent proof.

It is apparent on the face of the through bills of lading that the provision as to shipper's insurance relates only to the inland carriage and the independent contract for such carriage. The Circuit Court correctly held in regard to

this point as follows: "Stress is laid by the respondent on the provisions in the through bills of lading 'that the carrier so liable shall have the full benefit of any insurance that may have been so effected upon or on account of said goods.' But that provision applies only to the transportation to New York and not to the ocean transit. The terms and conditions of the transportation to New York by the railroads and their connections are separate and distinct in the through bills of lading from the terms and conditions of the ocean transportation. The agent signs as 'agent severally, but not jointly.' The terms and conditions of the ocean carriage contain no clause as to the benefit of insurance. No such clause is found in the bill of lading dated at New York, not issued in connection with railroad transportation."

Opinion, Recs., p. 27, and see the statement of case, supra, p. 4, where it clearly appears that the contract for the inland carriage and the liability of the inland carrier terminated on the delivery of the goods to the Steamship Company at New York.

Eighth Point.—There was no estoppel against the libellants below arising from any act, circumstance or dealing between them and their assured, or the owner of the *Montana*.

The policies issued by the insurance companies respectively were open policies in the usual form. They attached to the goods described in the bills of lading upon the issuing of the certificates under the policy. They constituted contracts wholly between the insurance companies and the assured.

It is immaterial whether the insurers had or had not notice of the terms of the bills of lading; the rights of all parties were fixed by the written contracts. It was competent for the insurance companies to stipulate that in case of loss they should be subrogated to all the rights

of the assured against the carrier of the goods insured, and in such case if the assured had attempted to give to the carrier the benefit of the insurance it would have defeated his claim against the insurer.

Carstairs v. *Mechanics' and Traders' Ins. Co.*, 18 Fed. Rep., 473.

In the absence of such express stipulation, the insured was left free to contract with the carrier that in case even by his own negligence the goods should be lost or damaged by a peril covered by the insurance he should have the benefit of the insurance (*Phœnix Ins. Co.* v: *Erie Transportation Co.*, 117 U. S., 312). So that in either case the contract stipulations measured and regulated the rights of the insured and the insurer respectively, and no question arises as between the insurance companies, and the carrier founded on any direct relation or transaction out of which an estoppel can arise. The right of subrogation under which these actions are prosecuted, is the right of the insured enuring to the benefit of the insurer and nothing more, but it is the right of the insured to the full extent which they possessed it at the time of the loss, and if they havo not destroyed or abridged it by their dealing with the carrier it exists in full force. Therefore no possible estoppel can be invoked against the insurance companies on the ground of any act of theirs, and as already shown, the assured never made any contract with the carrier touching the insurance, except as to the inland transportation.

There is no error in the record as to this point.

Ninth Point.—THE APPLICATION TO AMEND. The appellant's motion for leave to amend the answers in the several actions and to introduce new proofs was properly denied by the Circuit Court.

See Opinion, 22 Bltchf., 399.

The appellees rest this part of the case on the opinion above cited and on the brief submitted herewith, filed in appellees' motion to strike out the papers returned by the clerk of the U. S. Circuit Court under the writ of *certiorari* for diminution of record. The motion having been directed to be heard at the same time as the main appeals we rely on all the grounds urged in the brief on the motion, and respectfully submit that there was no error in the disposition made by the Circuit Court of the application to amend.

Tenth Point.—The several decrees of the Circuit Court should be affirmed with costs and the order of the Circuit Court denying the motion to amend should also be affirmed.

BUTLER, STILLMAN & HUBBARD,
Proctors for Appellees.

WILLIAM ALLEN BUTLER,
Advocate.

Supreme Court of the United States.

ON APPEAL FROM THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

No. 56. October Term, 1887.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED),
Appellant,

versus

THE PHENIX INSURANCE COMPANY,
Appellee.

No. 57. October Term, 1887.

SAME,
Appellant,

versus

INSURANCE COMPANY OF NORTH AMERICA,
Appellee.

PAPERS ON APPELLEE'S MOTION TO STRIKE FROM THE RECORD THE PAPERS CONTAINED IN THE RETURN TO THE WRIT OF CERTIORARI FOR DIMINUTION OF THE RECORD.

BEEBE & WILCOX,
Proctors for Appellant.

BUTLER, STILLMAN & HUBBARD,
Proctors for Appellee.

Evening Post Job Printing Office, N. Y.

Supreme Court of the United States.

1

ON APPEAL FROM THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited),
Appellant,
versus
THE PHENIX INSURANCE COMPANY,
Appellee.

No. 56. October Term, 1887.

2

SAME,
Appellant,
vs.
INSURANCE COMPANY OF NORTH AMERICA,
Appellee.

No. 57. October Term, 1887.

3

GENTLEMEN:

Please to take notice that upon the record on appeal to this Court herein, the writ of *certiorari* issued herein February 3, 1886, the return to said writ, the annexed

affidavit of Wilhelmus Mynderse, and the annexed certificate of the Clerk of the Circuit Court, we shall apply to the Supreme Court of the United States at the Capitol, in the District of Columbia, on Monday, the 17th day of October, 1887, at the opening of Court or as soon thereafter as counsel can be heard, for an order amending the record on appeal to this Court herein by striking therefrom, and from the files of this Court, the said writ of *certiorari* and the return thereto made by the Clerk of the said Circuit Court, consisting of the following papers, namely:

1. Affidavit of Franklin Wilcox verified herein August 6th, 1884.

2. Proposed amended answer of the Liverpool and Great Western Steam Company (Limited) in the first above entitled case filed October 7th, 1884.

3. The proposed amended answer of the Liverpool and Great Western Steam Company (Limited) in the second above entitled case filed October 7th, 1884.

4. Opinion of Mr. Justice Blatchford on motion to amend answers filed herein August 21st, 1884.

5. Order of Circuit Court of the United States for the Eastern District of New York, denying said motion entered herein September 1st, 1884.

6. The certificate of the said clerk to the return to the said writs of *certiorari*.

The said papers being as claimed by appellee's proctors improperly before this Court.

Dated New York, October 3, 1887.

Yours, &c.,

BUTLER, STILLMAN & HUBBARD,
Proctors for Appellee.

To Messrs. BEEBE & WILCOX,
Proctors for Appellant.

SUPREME COURT OF THE UNITED STATES. 7

ON APPEAL FROM THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited),
Appellant,
versus
THE PHENIX INSURANCE COMPANY,
Appellee.
No. 56.

8

SAME
Appellant,
vs.
INSURANCE COMPANY OF NORTH AMERICA,
Appellee.
No. 57.

9

SOUTHERN DISTRICT OF NEW YORK, City and County of New York, } ss.:

WILHELMUS MYNDERSE, being duly sworn, says: That he is one of the firm of Butler, Stillman & Hubbard, proctors for the libellant and appellee herein; that at the time the record on appeal herein was being prepared by the Clerk of the Circuit Court objection was duly made by appellee's proctors to said clerk against the including in the record of the papers thereafter returned to this Court under the writ of *certiorari* issued herein on the 3d of February, 1886, and that on such objection the clerk excluded said papers from said record as then transmitted; that depo-

10 nent attended on the return of the motion for the issuing of the writ of *certiorari* herein, and opposed the same on the ground that the papers sought to be included in the record were not properly a part thereof, and that the Chief Justice in announcing the granting of said motion was understood by deponent to state that it was a matter of course to allow a *certiorari*, and that the question involved in the point of objection made on said motion by deponent could properly be made by a motion to strike from the record the matters objected to.

Deponent further says that annexed hereto, marked respectively "A" and "B," and made part hereof, are copies of the petitions of appeal filed by the appellants on their appeals from the District Court to the Circuit Court
11 in these actions.

WILHELMUS MYNDERSE.

Sworn to before me, this 3d day of October, 1887,

C. S. SIMPSON,
Notary Public,
N. Y. Co.

[SEAL.]

12

"A." 13

U. S. CIRCUIT,

EASTERN DISTRICT OF NEW YORK.

THE INSURANCE COMPANY OF NORTH AMERICA,
Libellant and Appellee,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited),
Respondent and Appellant. 14

TO THE HONORABLE THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF NEW YORK.

The appeal of the above-named respondent and appellant, respectfully shows:

That on or about the 29th day of November, 1880, the libellant and appellee filed its libel in the District Court of the United States, for the Eastern District of New York, against the above-named respondent, claiming over fifty dollars, and praying, among other things, that said respondent be condemned to pay the libellant's claim, with costs, as by reference to said libel will more fully appear. 15

That thereafter this respondent duly appeared in said suit, and on or about the 21st day of February, 1881, it duly filed its answer to the said libel, and praying, among other things, that the libel be dismissed, with costs, as by reference to said answer will more fully appear.

That thereafter, and on or about the 8th, 9th, 10th, 13th and 14th days of November, 1882, and the 2d, 4th, 6th and 7th days of May, 1883, the said cause was heard before the Honorable Charles L. Benedict, Judge of the District Court of the United States, for the Eastern District of New York, upon proofs and depositions of the respective parties; and the said judge having advised thereon, did, on

16 or about the 2d day of July, 1883, make a decree in said cause, decreeing that the said libellant recover from the respondent the damages by it sustained by reason of the facts set forth in the libel herein, and that it be referred to a Commissioner of this Court to ascertain and compute such damages.

That the said reference was had and the Commissioner to whom the same was referred made his report, to which exceptions were filed by respondent, and the said exceptions were stricken out by the Court on motion of libellants.

That such proceedings were thereafter had in said cause, that by the final decree made and entered therein on or about the 19th day of February, 1884, it was ordered, adjudged and decreed, that the libellant recover herein against
17 the respondent the sum of thirty-six thousand two hundred and seventy-seven and $\frac{20}{100}$ dollars, damages, interest and costs, as by reference to said decree will more fully appear.

And this appellant is advised and insists that the said decree is erroneous, inasmuch as the libellant was not entitled to any damages or costs, and said exceptions should not have been stricken out, and the libel should have been dismissed, with costs to respondent.

And respondent and appellant, for these and other reasons, appeals from the whole of the said decree in favor of said libellant to the next Circuit Court to be held in said District, and on the said appeal it intends to have the said cause heard anew on the pleadings and proofs in the Dis-
18 trict Court, and other proofs to be introduced in the said Circuit Court, and it prays that the said decree and every part thereof may be reversed, with costs.

And respondent and appellant prays that the record and proceeding of the District Court may be returned to the said Circuit Court, and that the said decree of the District Court may be reversed, with costs, and that the said respondent and appellant may have such other relief as to said Circuit Court may seen just.

Dated May 5th, 1884.

BEEBE, WILCOX & HOBBS,
Proctors for Appellant.

(Endorsed)—Petition of Appeal.—Filed and entered, May 6th, 1884.

19

"B."

U. S. CIRCUIT COURT,

EASTERN DISTRICT OF NEW YORK.

THE PHENIX INSURANCE COMPANY,
Libellant and Appellee,

vs.

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (Limited),
Respondent and Appellant.

20

TO THE HONORABLE THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF NEW YORK.

The appeal of the above-named respondent and appellant, respectfully shows:

That on or about the 27th day of January, 1881, the libellant and appeelee filed its libel in the District Court of the United States, for the Eastern District of New York, against the above named respondent, claiming over fifty dollars, and praying, among other things, that said respondent be condemned to pay the libellant's claim, with costs, as by reference to said libel will more fully appear. 21

That thereafter this respondent duly appeared in said suit, and or about the 21st day of February, 1881, it duly filed its answer to the said libel, and praying, among other things, that the said libel be dismissed, with costs, as by reference to said answer will more fully appear.

That thereafter, and or about the 8th, 9th, 10th, 13th and 14th days of November, 1882, and the 2d, 4th, 6th and

22 7th days of May, 1883, the said cause was heard before the Honorable Charles L. Benedict, Judge of the District Court of the United States, for the Eastern District of New York, upon proofs and depositions of the respective parties; and the said judge having advised thereon, did, on or about the 2d day of July, 1883, make a decree in said cause decreeing that the said libellant recover from the respondent the damages by it sustained by reason of the facts set forth in the libel herein, and that it be referred to a Commissioner of this Court to ascertain and compute such damages.

That the said reference was had and the Commissioner to whom the same was referred made his report, to which exceptions were filed by respondent, and the said exceptions were stricken out by the Court on motion of libellants.

23

That such proceedings were thereafter had in said cause that by the final decree made and entered therein on or about the 19th day of February, 1884, it was ordered, adjudged and decreed, that the libellant recover herein against the respondent the sum of one thousand six hundred and sixty-three and $\frac{34}{100}$ dollars, damages, interest and costs, as by reference to said decree will more fully appear.

And this appellant is advised and insists that the said decree is erroneous, inasmuch as the libellant was not entitled to any damages or costs, and said exceptions should not have been stricken out, and the libel should have been dismissed, with costs to respondent.

24

And respondent and appellant, for these and other reasons, appeals from the whole of the said decree in favor of said libellant to the next Circuit Court to be held in said District, and on the said appeal it intends to have the said cause heard anew on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court, and it prays that the said decree and every part thereof may be reversed, with costs.

And respondent and appellant prays that the record and proceeding of the District Court may be returned to the said Circuit Court, and that the said decree of the District Court may be reversed, with costs, and that the said re-

spondent and appellant may have such other relief as to 25
said Circuit Court may seem just.

Dated May 5th, 1884.

BEEBE, WILCOX & HOBBS,
Proctors for Appellant.

(Endorsed)—Petition of Appeal.—Filed and entered May 6, 1884.

UNITED STATES CIRCUIT COURT, }
Eastern District of New York, } ss.:

I, B. LINCOLN BENEDICT, Clerk of the Circuit Court of the United States of America, for the Eastern District of New York, do hereby certify that the writings annexed 26
to this certificate are true extracts from the entries made in the Admiralty Register of appeal cases in this Court.

IN WITNESS WHEREOF, I have caused the seal of the said Court to be hereunto affixed at the City of Brooklyn, in the Eastern District of New York,
[SEAL.] this 29th day of September, in the year of our Lord one thousand eight hundred and eighty-seven.

B. LINCOLN BENEDICT,
Clerk.

27

28 UNITED STATES CIRCUIT COURT,

EASTERN DISTRICT OF NEW YORK.

THE INSURANCE COMPANY OF NORTH AMERICA,
Libellant and Appellee,

versus

THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY,
Respondent and Appellant.

29

THE PHENIX INSURANCE COMPANY,
Libellant and Appellees,

versus

THE SAME,
Respondent and Appellant.

1884.

30 May 27. Apostles filed with Part I., II. and III.
Note of issue filed.

" On consent. Order entered depositing $43,065 in the Central Trust Company of New York, subject to the further order or decree of this Court in the suit of the Insurance Company of North America. And on like consent the sum of $19,305 deposited in the same company, subject to the further order and decree of this Court in the suit of the Phenix Insurance Company.

July 1. Causes argued and submitted.

" 31. Decision rendered.

Aug. 4. Costs taxed in Insurance Company of North America at $93.25. 31

Aug. 21. Affidavit and notice of motion for leave to amend filed. Decision rendered denying motion for leave to amend.

" Final decree filed in favor of libellant in case of the Insurance Company of North America for $37,246.15, and entered as of the 16th day of August, 1884. Judgment docketed.

" Final decree filed in favor of the Phenix Insurance Company for $16,542.35, and entered as of the 16th of August, 1884. Judgment docketed.

" 28. Respondent's exceptions to finding in case of the Phenix Insurance Company and the Insurance Company of North America filed, with notice of settlement. 32

Sept. 1. Order entered denying motion to amend answers.

Sept. 2. Petitions of appeal and orders allowing same in cases of Phenix Insurance Company and Insurance Company of North America filed.

" Bill of exceptions filed.

" 5. Bond on appeal approved.

" Citations issued.

Oct. 1. Records sent U. S. Supreme Court.

1886.

Jan. 16. Copy of notice of motion for writ of *certiorari* for diminution of record filed. 33

129-465

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.8

No. ~~185.~~ 14.

THOMAS H. ALLEN, PERRY NUGENT, AND JOHN B. LALLANDE, PARTNERS UNDER THE FIRM-NAME OF ALLEN, NUGENT AND COMPANY, AND THOMAS H. ALLEN, APPELLANTS,

vs.

BENJAMIN H. SMITH, LEVI H. SPRINGER, ADMINISTRATOR OF WILLIAM H. TODD, DECEASED, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED NOVEMBER 24, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 185.

THOMAS H. ALLEN, PERRY NUGENT, AND JOHN B. LALLANDE, PARTNERS UNDER THE FIRM-NAME OF ALLEN, NUGENT AND COMPANY, AND THOMAS H. ALLEN, APPELLANTS,

vs

BENJAMIN H. SMITH, LEVI H. SPRINGER, ADMINISTRATOR OF WILLIAM H. TODD, DECEASED, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JUNE 1, 1887.

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1 Be it remembered that on the 21st day of November, 1882, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas Allen, Nugent & Co. *et al.*, by D. H. Reynolds & J. M. Moore, Esqs., their solicitors, and filed therein their bill of complaint against Benjamin H. Smith *et al.*, which bill of complaint is in words and figures following, to wit:

2 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

To the judges of the circuit court of the eastern district of Arkansas:

Thomas H. Allen, of Memphis, a citizen of the State of Tennessee; Perry Nugent & John B. Lallande, of New Orleans, citizens of the State of Louisiana, partners in business in New Orleans under the firm name of Allen, Nugent & Co., being now in liquidation, and Thomas H. Allen, in his own right, bring this their bill of complaint against Benjamin H. Smith, of Chicot county, a citizen of the State of Arkansas, and Levi H. Springer, of Chicot county, a citizen of the State of Arkansas, as and in his capacity of administrator of the estate of William A. Todd, deceased, late of Philadelphia and a citizen of Pennsylvania, and Mrs. J. T. Smith, wife of said Benjamin H. Smith, and C. J. Gallagher and E. J. Gallagher, his wife, and C. Bowles and Jennie W. Bowles, his wife; John
3 Strong and Eva Strong, his wife; Richard H. Todd, Derringer Todd, and Willie Todd, of Philadelphia, citizens of the State of Pennsylvania.

And thereupon your orators complain and say that on the 23rd day of January, 1875, said intestate, William H. Todd, executed his three several promissory notes in favor of one Isaac Cohen, each for the sum of $1,666.66, with 10% interest from date until paid, and payable in one, two, and three years, respectively, from date; and said notes were afterwards and before maturity indorsed by said Cohen, and for value passed to said Allen, Nugent & Co. as the owners and holders thereof; that they instituted suit on the two notes first falling due by attachment in the circuit court of the county of Chicot against said Todd and his interest in the following lands, to wit: An undivided half interest in the S. ½ of S. ½, sec. 4, S. W. diagonal ½ of N. ½ of S. ½, sec. 4; sec. 5; S. W. ¼
4 sec. 8; E. ½ of N. W. ¼ sec. 8; W. ½ of S. E. ¼, sec. 8, and N. E. ¼, sec. 18, in township 15 south, in range one west; and the entire interest in W. ½ of N. W. ¼, sec. 8, in same township, were on June 18th, 1877, levied on under said attachment to satisfy said debt, and on February 2nd, 1878, they obtained judgment in said suit against said Todd for $4,341.64, with 10% interest from that date and costs of suit, and same was declared to be a lien on said property from the date of said levy, and the property was to be sold in June, 1878, to pay the same, and that said judgment remains wholly unsatisfied.

And your orators further state that, on February 20th, 1878, they instituted suit in this honorable court, on the law side thereof, on the note falling due in January, 1878, and that on the 25th day of Feb-

ruary, 1878, the lands hereinbefore mentioned were levied on under an order of attachment issued in said suit, and at the April term, 1878, and on the 19th day of April, 1878, they recovered
5 judgment in said suit against said Todd for $2,206.47, with 10 % interest thereon from that date and costs, and said judgment was declared to be a lien on said lands from the levy of said attachment, and said judgment remains wholly unsatisfied. In both of the aforesaid suits the said defendant (Todd) was personally summoned as well as notified by the attachments.

And your orator, the said Thomas H. Allen, states that on the 13th day of July, 1876, the said William H. Todd executed his promissory note in favor of Thomas H. Allen & Co. for $1,507.58, and payable thirty days from date, and in June, 1879, suit was brought on said note by the payees against said Todd in the court of common pleas No. 2 in the county of Philadelphia, in the State of Pennsylvania, and judgment was recovered in said suit against said Todd on July 17th, 1877, for $1,628.21 and $9.12 costs, which judgment was duly assigned to said Thomas H. Allen, and, said judgment remaining unpaid, said Allen instituted suit
6 thereon in the circuit court of said county of Chicot against said Todd by attachment, and the interest of said Todd in the lands hereinbefore mentioned was attached in said suit on October 3rd, 1877, and personal service was also had upon said Todd; and on February 2nd, 1877, said Allen recovered judgment in said suit against said Todd for $1,683.83, with interest from that date, and costs, and same was declared a lien upon said lands from the date of the levy of said attachment on October 3rd, 1877, which said judgment remains wholly unsatisfied.

And your orators further state that at the time of the execution of said promissory notes upon which judgments were rendered in favor of your orators as aforesaid, and afterwards and up to and after the 1st day of August, 1876, and at the time of the levy of the attachments in said suits, the said William H. Todd was the owner of an undivided half interest in the Bellevue plantation, in said county, except the W. ½ of N. W. ¼, sec. 8, T. 15, 1
7 west, he owning the entire interest, the said plantation containing, besides the lands hereinbefore mentioned, the following: E. ½ sec. 6, S. W. ¼ sec. 6, S. ½ of N. W. ¼, sec. 6, and sec. 1, in said T. 15, S. 1 west; that at the July term, 1876, of said circuit court of Chicot county judgments were obtained against said Todd in favor of J. McMurray & Co. and in favor of Jurey & Gillis, and, besides, a decree in favor of William P. Halliday, enforcible by execution, was already existing in said court against said Todd, and other creditors against said Todd were pressing or threatening to press him for the payment of the money due to them, and the said Todd, finding himself thus in failing circumstances and pressed by his creditors, conspired, contrived, and combined with his son-in-law, the said Benjamin H. Smith, to transfer to said Smith a large and valuable part of his property to save it from its creditors, and for the purpose of carrying out this design and for the fraudulent purpose of hindering, delaying, and defrauding the creditors

of the said Todd and of transferring the property to said Smith to save it from creditors of Todd, the said Smith and the said Todd resorted to many fraudulent devices, and among others the following:

1st. Notwithstanding the said Smith was largely indebted to said Todd after January, 1869, for unpaid purchase-money for the half interest in Bellevue, purchased by Smith from Todd, and notwithstanding Smith resided on Bellevue and controlled the crops raised thereon and the services of Smith had been taken into account in the adjustments and payments from time to time between the parties and the said Smith had kept another manager on Yellow Bayou almost the entire time, and that there was in fact nothing due from Todd to Smith for services, it was managed by them that suit should be brought by said Smith against said Todd, and said Smith, in pursuance of said fraudulent purpose, on the 4th day of August, 1876, brought suit against said Todd in said Chicot circuit court for the sum of $8,000 for alleged and pretended services that had not been paid for, rendered for said Todd in the management of his half interest in Bellevue and his Yellow Bayou plantation from January, 1869, to date, at $1,000 per annum, and interest (when by no reasonable calculation of interest actually due upon a just debt, where the creditor desired to obtain duly what was due, and all that was due, as would be the case if suit were in good faith brought, could the debt be, as made, duly the sum of $8,000.-6), and caused an attachment to be issued, which was, on August 8th, 1876, levied by direction of said Smith on about 115 bales of cotton, besides mules, cattle, sheep, gin-stands, wagons, and farming utensils, supposed to be reasonably worth at the time $8,000, and being all the personal property of said Todd on said Belleue and Yellow Bayou plantations, and said property was by the sheriff, at Smith's request, left in the custody of one W. E. Mole, the manager of said Todd, still in charge of and managing his Yellow Bayou plantation; that on August 14th, 1876, said Yellow Bayou plantation was sold to satisfy the decree in favor of said Halliday, and after exhausting said Yellow Bayou plantation there was still a small balance due said Halliday on his decree. Shortly after executions were issued on the judgments in favor of J. McMurray & Co., and to make the balance due said Halliday, said balance and said judgments at the time amounting to some $1,285.00, and on September 28th, 1876, to satisfy said executions, the half interest of said Todd in said sections 6 & 7, being some 1,200 of the most valuable part of Bellevue plantation, was sold and bought in by said Smith at less than $3.00 an acre for an entire interest, when same were at the time reasonably worth from $20 to $30 an acre, and the said Todd, in pursuance of his fraudulent scheme, did not redeem said lands from said sale, and said Smith afterwards received deeds therefor.

And afterwards, on December 19th, 1876, in furtherance of the fraudulent scheme of said Todd and Smith, the said Smith directed the sheriff to release to Todd all the cotton so attached and directed him to attach the interest of said Todd in the remaining

part of Bellevue, being same hereinbefore mentioned as attached in the suits of your orators, and also to attach some sixty acres in sec. 12, T. 15, 2 west, lying east of Yellow Bayou stream, which he claimed as belonging to and being a part of Bellevue plantation. No steps were taken in said attachment suit of Smith against Todd at the January term, 1877, of said Chicot circuit court, the judgment in favor of said Jurey and Gillis, having in the meantime been paid off by money raised from the sale of the cotton released by Smith's direction on Dec. 19, 1876, as your orators are informed and believe; and at the July term, 1877, of said Chicot circuit court, and after the levy of the attachments in the suits by your orators, on June 18th, 1877, an appearance was entered by said Todd to
12 said suit, and a pretended answer was filed for Todd to said complaint, as appears from the record thereof, and tho' it was well known in the neighborhood that said W. E. Mole, in whose charge and custody the property attached in the suit was left, was at the time in the charge and management of Yellow Bayou, and that he and others, as agents of said Tood, had for years been in charge of said plantation, and, although it appeared that five of the eight years' services charged for would be and were barred by limitations, if ever rendered and not paid for, no defense was in good faith and in fact put into said suit, the pretended answer not being sworn to and no issue made, and yet it was made to form the pretext for submitting the case to a jury, and a verdict rendered and a judgment entered for $8,000 against Todd, the fraudulent intent and purpose of said Todd and Smith being to have the outward show of litigation, while judgment was to be rendered for Smith, and
13 was accordingly rendered and declared to be a lien on the property not released. At the January term, 1878, of said court, a day was fixed for the sale of said property, and on April 1st, 1878, it was sold and bought in by said Smith for the nominals sum of $4,045.00. A copy of the proceedings in said attachment suit is herewith filed, marked Exhibit "A," and made a part hereof.

And your orators further state that on the 25th day of May, 1878, they instituted suit in this honorable court, No. 283, to have the said judgment against the said Todd in favor of said Smith and the proceedings thereunder declared to be fraudulent and void as to the creditors of said Todd, and that the property embraced in said judgment and that has been attached by your orators, upon which they are adjudged to have liens, be sold by the orders of this court and the proceeds of such sale to be applied to the payment of their said judgment, &c., and that answers were filed by said Todd and by said Smith and issues formed, and the suit was progressing, and while so pending, to wit, on the — day of ——, 18—, said Todd de-
14 parted this life; and afterwards, on the — day of ——, 18—, the suit was revived against Levi H. Springer, as adm'r of the estate of said Todd, and against Mrs. J. V. Smith, wife of said Benjamin H. Smith; C. J. Gallagher and E. J. Gallagher, his wife; and C. Bowles and Jennie W. Bowles, his wife; and John Strong and Eva Strong, his wife; Richard A. Todd, Derringer Todd, and Willie Todd, the said Mrs. Smith, Mrs. Gallagher, Mrs. Bowles, Mrs. Strong,

and Richard A. Derringer and Willie Todd being the heirs-at-law of said intestate William H. Todd, deceased, and defendants herein; and, after being thus revived, the suit progressed slowly. Some depositions were taken from time to time, delays being caused by agreements of counsel for the parties postponing the taking of depositions and by overtures of defendant Smith, thro' other parties, looking to a compromise and settlement of the demands of your orators and other causes until Dec'r, 1881, when, taken at a disadvantage on account of not having their testimony and not being ready for hear-
15 ing, your orators, by leave of court, dismissed their suit without prejudice, and they now hereby renew their suit for the purposes sought in the original suit and within one year from the day of dismissal as aforesaid.

And your orators further state that said property upon which their liens are declared to rest is reasonably worth a large sum, say $20,000, and more than enough to pay off and satisfy their demands if the fraudulent judgment in favor of said Smith and the sale thereunder should be set aside and the property freed therefrom and sold at a fair price under the orders of this court, and that by reason of such fraudulent judgment in favor of said Smith against said Todd and the sale thereunder the title to said property was so clouded that your orators could not safely proceed to sell the same under their said judgments, nor can they yet safely proceed to sale until said fraudulent judgment and sale are cancelled, set aside, and held for naught so far as the same effects them as creditors of said
16 Todd, and that they desire to have said fraudulent judgment and the sale thereunder set aside that they may by the sale of said property obtain the amounts due them on their said judgments.

Your orators pray that said judgment in favor of said Smith against said Todd and the sale of the said lands thereunder be decreed to be fraudulent and void as to the creditors of said Todd, and that the property so sold under said fraudulent judgment and upon which your orators have liens by virtue of their said judgments be sold under the order of this honorable court, and out of the proceeds said liens and judgments of your orators be paid and satisfied, and that your orators may have such other and further relief as to your honors may seem meet.

Therefore will your honors grant unto your orators an order as provided in section 8 of chapter 137 of the acts of Congress, 1873–'5 in default of service of subpœnas commanding said defendants to appear before your honors in your said circuit court and then and there answer the premises and abide the order & decree of the court.

D. H. REYNOLDS,
Solicitor for Complainants.

17 EXHIBIT "A."

Complaint at Law.

January Term, 1877.

BENJAMIN H. SMITH, Plaintiff,

vs.

WILLIAM H. TODD, Defendant.

The plaintiff, Benjamin H. Smith, states that the defendant, William H. Todd, is indebted to him in the sum of eight thousand dollars for labor performed by the plaintiff for the defendant, particulars of which are set out in an account filed herewith and made part of this complaint, no part of which said sum has been paid; wherefore plaintiff prays judgment for eight thousand dollars, and for other relief.

JAMES F. ROBINSON,
Att'y for Plaintiff.

STATE OF ARKANSAS, *Chicot County:*

The plaintiff, Benjamin H. Smith, says that he believes the statements of the foregoing complaint are true.

BENJ. H. SMITH.

Subscribed and sworn to before me this 4th day of August, 1876.
H. W. GRAVES, *Clerk,*
By GEO. S. WILLIAMSON, *D. C.*

18 *Affidavit.*

STATE OF ARKANSAS, *Chicot County:*

Chicot Circuit Court.

BENJAMIN H. SMITH, the Plaintiff,

vs.

WILLIAM H. TODD, Defendant.

The plaintiff, Benjamin H. Smith, states that the claim in this action against the defendant, William H. Todd, is for money due for labors performed by plaintiff for defendant, and that it is a just claim; that he ought, as he believes, to recover thereon eight thousand dollars, and that said defendant, William H. Todd, is a non-resident of the State of Arkansas.

BENJAMIN H. SMITH.

Subscribed and sworn to before me this 4th day of August, 1876.
H. W. GRAVES, *Clerk,*
By GEO. S. WILLIAMSON, *D. C.*

Chicot Circuit Court.

BENJAMIN H. SMITH, Plaintiff,
vs.
WILLIAM H. TODD, Defendant.

19 We undertake that plaintiff, Benjamin H. Smith, shall pay to the defendant, William H. Todd, all damage which he may sustain by reason of this action if the order therefor is wrongfully obtained.

August 4th, 1876.

BENJAMIN H. SMITH.
ISAAC COHEN,
P'r A. COHEN.
AURIS COHEN.

Attest: H. W. GRAVES, *Clerk*,
By GEO. S. WILLIAMSON, *D. C.*

Account.

William H. Todd to Benjamin H. Smith, Dr.

AUG. 4, 1876.

To amount due for services rendered in the supervision and management of said Todd's Yellow Bayou plantation and his half interest in the Belleville plantation, from January, 1869, to date, at $1,000 per annum, & interest, $8,000.

BENJ. H. SMITH.

Endorsed.

We, the jury, find for the plaintiff and assess his damages at $8,000.

L. N. CAUGHEY, *Foreman.*

Filed and order of attachment and summons issued this 4th day of August, 1876.

H. W. GRAVES, *Clerk*,
By GEO. S. WILLIAMSON, *D. C.*

20 *Order of Attachment.*

STATE OF ARKANSAS, *County of Chicot:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are hereby commanded to attach William H. Todd by all and singular his goods, chattels, lands, and tenements, credits and effects, not exempt from execution, or so much thereof as shall be sufficient to recover the sum of eight thousand dollars, the debt as sworn to, with interest and cost of suit, in whose hands or possession the same may be found in your county, and you are also commanded to summon the said William H. Todd to be and appear before the judge of our circuit court, at the court-house in the

county of Chicot, on the 1st day of its next January term, it being the second Monday in January next after the date hereof, then and there to answer the complaint of the plaintiff, Benj. H. Smith, and that you then and there certify how you have executed this writ.

In testimony whereof I have hereunto set my hand and affixed the seal of said court on this 4th day of August, 1876.

H. W. GRAVES, *Clerk*,
By GEO. S. WILLIAMSON, *D. C.*

21 *Sheriff's Return.*

This writ came to my hands on the 5th day of August, same year. Served the same by attaching the following personal property of within-named William H. Todd, on Yellow Bayou plantation, in Chicot county, Arkansas, viz: ¼ interest in cotton raised by Henry Turner, about 5 bales, more or less, in gin; ¼ interest in cotton raised by Henry Turner, about 5 bales, more or less, in gin; ¼ int. in cotton of Wiiliam Turner, 4 bales, more or less, in pen; ¼ int. in Broden Brown's 5 bales, more or less, in pen; ½ int. in James Webb's cotton, 4 bales, more or less, in pen; ½ int. in Sam. Williams' 2 bales, more or less, in pen; ½ int. in A. Coltonhorse's cotton, 2 b., more or less, in pen; ½ int. in Clay Cottonhorse's 3 bales, more or less, in pen; also the following interest which Todd has in the now growing crop on Yellow Bayou, cultivated by the persons and squads respectively named: Jackson Brown, ½ int. in 6 bales, more or less; Slayd Warren, ½ int. in 5 b., more or less; Clarence Thurman, ½ int. in 2 b., more or less; Lunora Tripp, ½ int., 3 b., more or less; Broden
22 Brown, ¼ int. in 3 b., more or less; Billy Robinson, 6 b., more or less; Cy. Brown, ¼ int. in 4 b., more or less; Ches. White, 2 b., more or less; Wm. Turner, ½ int. in 2 b., more or less; Jack Newton's squad, 4 b., more or less; John Turner's 4 b., more or less; Clay Coltonhorse squad, 10 b., more or less; An'y Turner's squad, 12 b. c., more or less; James Webb, 5 b. c., more or less; Sam. Tripp, 6 b. c., more or less; Sam. Wilson, 4 b. c., more or less; James Banks, 6 " " " " Celia Brown, 4 " " " "

Also the following mentioned stock, viz:

1 brown horse mule, named Mack; 1 bay mare mule, — Darwin.
1 " " " Dan; 1 brown horse " " John.
1 black mare " " Emma; 1 black " " " Jack.
1 sorrel mare " Celia; 1 cream " " " Bently.
1 grizzle " " Pete; 1 bay horse " Glass.
1 black " " Dora; 1 black " George.
1 roan " " May; 1 sorrel pony.

1 stud colt; 2 white cows; 1 white calf; 1 spotted calf; 1 yearling calf; 1 spotted cow; 2 sheep; 3 wagons; 1 carriage; 1 cart; 1 set carriage harness; 1 gin stand; 12 sets plow-gears; 1 side-saddle; 7 plows; 8 side beams; 2 sweeps; 1 pr. cotton balances; 1 gin stand; and I have left the same in charge of W. E. Mole, who has this day been appointed by me as custodian at the request of B. H. Smith.

S. H. HOLLAND, *Sheriff.*

23 The within-named cotton was this day released to defendant, W. H. Todd, on order of plaintiff, B. H. Smith.

S. H. HOLLAND, *Sheriff.*

I have also, upon the 19th Dec'r, attached the following-described lands by going upon the same and leaving a copy of attachment with B. H. Smith, in whose possession I found the same. Said lands are described as follows, vis: Und. ½ W. ½, sec. 8; und. ½ W. ½, S. E. ¼, sec. 8; und. ½, S. ½, S. ½, sec. 4; und. ½, diagonal S. ½, N. ½, S. ½, sec. 4, all in T. 15 S., 1 W.; also all of fr'l sec. 12 E. of W. bank of Yellow Bayou.

S. H. HOLLAND, *Sh'ff.*

At the July term, 1877, of the Chicot circuit court, on the 28th day of July, 1877, among others the following proceedings were had:

B. H. SMITH
vs.
WM. H. TODD } No. 957.

On this day comes J. R. Martin, attorney, and enters the appearance of the defendant, and leave is given him to file his answer, and the defendant files his answer.

24 *Defendant's Answer.*

Chicot Circuit Court.

BEN. H. SMITH *vs.* W. H. TODD.

Answer.

Comes the defendant, by attorney, and denies each and every allegation in plaintiff's complaint herein, as well — each and every item of his ac. on — herein.

J. R. MERTIN,
For Defendant.

Endorsed: Filed in open court July 25, '77. H. W. Graves, clerk.

At the July term, 1877, of the Chicot circuit court, on the 25th day of July, 1877, among others, the following proceedings were had vis:

BENJ. H. SMITH *vs.* WILLIAM H. TODD.

On this day this cause came on to be heard, both parties being present, by their attorneys, and announcing themselves ready for trial of this case, and thereupon came a jury of S. N. Gaughey
25 and eleven others of good and lawful jurors, who were sworn in to well and truly try this case and a true verdict render according to the evidence and law in the case, and after hearing the evidence and instructions of the court, returned into court with the following verdict endorsed upon the complaint:

"We, the jury, find for the plaintiff, and assess his damages at $8,000.

"S. N. GAUGHEY, *Foreman.*"

It is, therefore, ordered and adjudged and considered by the court that the plaintiff, B. H. Smith, have and recover of and from the defendant, Wm. H. Todd, the sum of eight thousand dollars, with interest from this date, and all costs in this suit. And it further appearing that there is a suit by attachment and that the writ of attachment herein was on the 8th day of August, 1876, duly and properly levied on the following property: thirteen head of mules, two horses, six head of cattle, two head of sheep, and a lot of farming utensils, and particularly described in said writ; and also on the 19th day of Dec., 1876, that said writ was duly levied on
26 the following-described real estate: und. ½ sec. 5, und. ½ sec. 8, und. ½ W. ½ S. E. ¼ 8, und. S. ½ S. ½ sec. 4, und. diagonal S. ½ N. ½ S. ½ sec. 4, all in T. 15 S., R. 1 W; also all of f'r'l sec. 12 E of W. bank of Yellow Bayou, the property of defendant herein, and is a lien upon the same from date of said levy. It is therefore ordered that said property, or so much thereof as is necessary, be sold to satisfy the judgment herein by the sheriff, upon his first giving twenty days' notice of the time, place, and terms of sale in accordance with the law.

Chicot Circuit Court. January Term, 1878.

B. H. SMITH, Plaintiff, *vs.* WM. H. TODD, Def't.

Comes the plaintiff, by attorney, and moves the court to enter a "*nunc pro tunc*" order, specifying the notice, time and place of sale, in the above case in accordance with the order and judgment of the court at the July term, 1877.

J. F. ROBINSON,
Att'y for Pl'ff.

27 At the Jan'y term, 1878, of the Chicot circuit court, on the 31st day of Jan'y, 1878, among others, the following proceedings were had, to wit:

BENJ. H. SMITH *vs.* WM. H. TODD.

On this day came the plaintiff, by his attorney, as well as the defendant, by his attorney, and it appearing to the court that the time and place and terms of sale of the property attached in this suit had not been entered up at the last term of this court in the judgment as —, it is, on motion of plaintiff, considered — adjudged that said judgment be made to speak the truth, now as for then, by fixing the place of sale of the attached property at the dwelling-house on Yellow Bayou plantation, and the time the first Monday in April, 1878, the sheriff giving twenty days' notice of the sale, as required by law.

Execution.

STATE OF ARKANSAS, *Chicot County:*

28 The State of Arkansas to *to* the sheriff of Chicot county:
Whereas Benjamin H. Smith hath heretofore, vis., on the

4th day of August, A. D. 1876, instituted in the circuit court of Chicot county, Arkansas, his suit by attachment against William H. Todd, the writ whereof was levied upon certain property and effects of said Wm. H. Todd, vis:

On one brown horse mule, named Mack.
" black mare, " Ema.
" sor-el " " Celia.
One grizzle horse mule, Pete.
black mare, Dora.
bay, Donie.
brawn horse, John.
black, Jack.
cream-colored horse, Jack.
bay horse, Barks.
black, Glass.
roan mare, Grays.
sorrel pony, May.
stud colt.
white cow.
white calf.
spotted calf.
yearling.
spotted cow.
2 sheep.
29 3 farm wagons.
1 carriage.
1 cart.
1 set car-iage harness.
1 gin stand.
12 sets plow-gears.
7 plows.
8 side lines.
2 sweeps.
1 p'r cotton balances, and—
1 gin stand.

Also und. ½ of sec. 5, und. ½ W. ½ 8; und. ½ W. ½ S. E. ¼ of sec. 8; und. S. ½ S. ½ sec. 4; und. diagonal S. ½ N. ½ sec. 4, all in town. 15 S., R. 1 W; also all of sec. 12, E. of W. bank of Yellow Bayou, as by the return upon said writ of attachment appears. And whereas the said Benjamin H. Smith, in our circuit court, on the 25th day of July, A. D. 1877, recovered judgment for the sum of $8,000 for his damage and $— for cost of suit against said Wm. H. Todd, which bears interest at the rate of 6% per annum from the 25th day of July, 1877, until paid:

You are therefore hereby commanded that out of the above-described property and effects, or so much thereof as will be necessary, you cause to be made the sum of eight thousand dol-
30 lars ($8,000), recovered as aforesaid, with 6% per annum interest thereon from the 25th day of July, 1877, until paid, and the further sum of $—, which was adjudged to be due said

Wm. H. Smith for his costs in said suit expended, and that you have said sums of money within sixty days to render to the said Benjamin H. Smith for his debt, interest, and cost aforesaid.

In testimony whereof I have hereunto set my hand and the seal of said court, hereto affixed, this the 22*th* day of Feb'y, 1878.

[SEAL.] H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

Endorsed: No. 59. To the sheriff of Chicot county. Returnable in 60 days from Feb'y 22d, 1878. Judg't July term, 1877. N. N. R. Rc., page 263. Debt, $8,000, 6% interest from July 25, '77. Clerk's cost, $6.05. This exect. tax, $1.25. Sheriff'- costs, $—. No stay of execution will be taken in this case. H. W. Graves, clerk, by Geo. F. Wilkinson, d'y.

By virtue of a *nunc pro tunc* order, made at the Jan'y term,
31 1878, of this court, in the within-entitled case, you are hereby authorized and directed to *to* make sale of the attached property herein described and mentioned, at the dwelling-house of Wm. H. Todd, on the Yellow Bayou plantation, on the 1st Monday in April, 1878, first giving 20 days' notice of such sale, as required by law.

Attest: H. W. GRAVES, *Clerk*,
By GEO. T. WILKINS, *D. C.*

Sheriff's Return.

This *suit* came to my hands on the 23rd day of Feb'y, 1878, at 10 a. m.

S. H. HOLLAND, *Sh'ff.*

I hereby return that at the time specified in this writ I sold the personal and real property herein mentioned and ordered to be sold, after advertising as herein directed, and that said sale was made in accordance with the within directions, and at said sale B. H. Smith was the highest and best bidder therefor, and became the purchaser thereof for the price and sum of four thousand and fifty-five
32 dollars ($4,055.00), which sum is by plaintiff ordered placed as a credit hereon, and this writ is hereby returned.

S. H. HOLLAND, *Sh'ff.*

In testimony that the preceeding 14 pages of writing and this page contain a true, full, and complete transcript of the cause therein mentioned as the same appears of file and record in my office I, H. W. *H. W.* Graves, clerk of the circuit court of Chicot county, Arkansas, have hereunto set my hand and affixed the seal of said court hereto this 13th day of May, 1878.

[SEAL.] H. W. GRAVES, *Clerk*,
By GEO. T. WILKINS, *D. C.*

See original case No. 283 in the circuit court of the U. S. for the eastern district Arkansas.

Endorsed: Allen, Nugent & Co. *et al. vs.* Benjamin H. Smith *et al.* Bill & exhibit. Filed and writs issued Nov. 21, 1882. Ralph L. Goodrich, clerk.

33 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 22nd day of October, anno Domini one thousand eight hundred and eighty-three, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On January 10th, 1883, come the defendants, Ben. H. Smith and Josephine V. Smith, Derringer Todd, Jennie W. Bowles, Evilyn E. Mole, formerly Evilyn E. Gallagher; Eva Strong, Richard H. Todd, and William H. Todd, by James F. Robinson and Wm. & G. B. Rose, Esq'r's, their solicitors, and file herein their answers; which answer of Ben. H. Smith is as follows:

Comes said defendant Smith, and, for answer unto said bill of complaint, saving all just exceptions to all errors and
34 insufficiencies in said bill contained, says:

That he has no knowledge of the said notes alleged to have been executed by William H. Todd to Isaac Cohen save by hearsay, but believes the same were executed, nor has he any knowledge of the alleged transfer thereof to the plaintiffs, nor of the suits, attachments, and judgments thereon, nor of the note said to have been executed by the said Todd to the plaintiffs, nor of the judgments said to have been rendered thereon, nor of the alleged subsequent proceedings under the same; and of all these matters the defendant demands proof.

Defendant denies that said plaintiff ever acquired any legal title to the said notes alleged to have been executed by said Todd to said Cohen, and charges that said notes were hypothecated to plaintiffs for a debt which was fully paid before said judgments were rendered, and that said judgments alleged to have been obtained thereon, if such exist, are false and fraudulent.

35 And he denies that he and said Todd conspired for the purpose of cheating, hindering, or delaying any creditor of said Todd. All charges in the bill having that import and all the charges of fraud in said bill are wholly untrue. Nor is it true that said Todd owned the entire interest in the west half of the northwest quarter *quarter* of section eight, in township fifteen south, in range one west. Said tract of land at the time mentioned in said bill belonged equally to said Todd and this defendant, and as partners, then engaged in the planting business.

Defendant admits that he brought suit against said Todd, as stated in said bill, and that he obtained judgment in said suit and bought in the lands mentioned in said bill under said judgment, but it is not true that there was anything false, collusive, or fraudulent in any of said proceedings. The suit was vigorously contested by said

Todd, and this defendant was justly and lawfully entitled to recover from said Todd every cent of the amount for which said judgment was rendered. The sales under which this defendant pur-
36 chased were regularly conducted and were in all respects fair and open and free from any taint of fraud.

The value of the lands thus purchased is overstated in the bill and were incumbered, at the time that this defendant acquired title to them, by a mortgage in favor of the Real Estate Bank for about $18,000, and that Joseph Woolfolk claimed a lien thereon for moneys secured by a mortgage executed by said Todd, on which he brought a foreclosure suit in this court and obtained a decree against this defendant and the administrator and heirs of said Todd, rendered by this court on the 24th day of October, 1881, fixing a lien on said lands superior to the title of this defendant for the sum of nine thousand seven hundred and forty-three dollars, which decree remains in full force.

This defendant admits the bringing of a former suit in this court by the plaintiffs on the same grounds set up in the bill herein, and that on a final hearing the plaintiffs elected to dimiss the
37 same. And said defendant, having fully answered, prays to be hence dismissed with his reasonable costs and charges.

JAMES F. ROBINSON.

U. M. & G. B. ROSE, *Sol's.*

STATE OF ARKANSAS, } ss:
County of Chicot, }

On this day came before me, a notary public in and for said county, Benjamin H. Smith, and made oath that the matters stated in the foregoing answer, so far as stated on his own knowledge, are true, and so far as stated on information received from others he believes them to be true.

BENJ. H. SMITH.

Sworn to and subscribed before me.
Witness my hand and official seal this 4th day of January, 1883.
[SEAL.] R. RUDDICK,
Notary Public.

Filed January 10, '83.

RALPH L. GOODRICH, *Clerk.*

Which answer of Josephine V. Smith, Deringer Todd, Jennie W. Bowles, Evilyn E. Mole, formerly Evilyn E. Gallagher; Eva
38 Strong, Richard H. Todd, and William H. Todd is as follows:

The joint and several answer of Josephine V. Smith, Deringer Todd, Jennie W. Bowles, Evelyn E. Mole, formerly Evelyn E. Gallagher; Eva Strong, Richard H. Todd, and William H. Todd to the bill of complaint exhibited against them herein, or to so much or such parts thereof as they and each of them are advised it is material or necessary for them or either of them to make answer unto.

The said defendants and each of them deny that the said William H. Todd combined, contrived, and conspired with the said defendant,

Benjamin H. Smith, to transfer to said Smith a large and valuable part of his property for the fraudulent purpose of hindering, delaying, and defrauding the creditors of said Todd; and these and each of these defendants deny that the said Todd and Smith, or either of them, resorted to any fraudulent devices for the purpose of saving the property of said Todd from his creditors, and particularly those set out in the bill of complaint herein.

These defendants and each of them, further answering, say
39 that said defendant Smith was one-half owner of said Gin tract of land, to wit, the W. ½ of the N. W. ¼ of section 8, in township 15 south, range one west, and that said Todd was not the exclusive and sole owner thereof, as charged in said bill of complaint.

These defendants and each of them, further answering, say that said claim for services, upon which judgment was obtained by said Smith against said Todd in the Chicot circuit court for $8,000, was just, and deny that there was any fraud connected therewith, and aver that said Smith did not employ an attorney to defend the suit as charged in the complaint, but that said Todd employed the said attorney himself, and that the said judgment was obtained by said Smith against said Todd without any connivance or fraudulent practices on the part of either of them; and these defendants and each of them do further say that said Smith has continuously since about the first of January, 1868, had the supervision and management of the said Yellow Bayou and Bellevue plantations as long as the said Todd owned or controlled them, and, to the best of
40 their belief, never received any compensation for his services prior to the institution of said suit for $8,000, and they and each of them believe the said judgment was just and the said sum due and owing to said Smith from said Todd.

And, having fully answered, said defendants pray to be hence dismissed with their reasonable costs.

U. M. & G. B. ROSE.

J. F. ROBINSON,
Att'ys for Def'ts.

COMMONWEALTH OF PENNSYLVANIA, } *ss:*
City of Philadelphia, }

The defendants, Josephine V. Smith, Deringer Todd, Jennie W. Bowles, and Evelyn E. Mole, and each of them, say that they believe the statements contained in the foregoing answer are true.

JOSEPHINE V. SMITH.
DERRINGER TODD.
JENNIE W. BOWLES.
EVELYN E. MOLE.

Sworn, affirmed, and subscribed before me this twelfth day of December, A. D. 1882.

[SEAL.]

THOMAS B. PROSSER,
Notary Public, Phila.

COMMONWEALTH OF PENNSYLVANIA, } ss :
County of Chester, }

41 Eva Strong, of the defendants above named, being duly sworn, doth swear and say that she believes the statements contained in the foregoing answer to be true.

EVA STRONG.

Sworn and subscribed before me this fourteenth day of December, A. D. 1882.

A. RUPERT,
Notary Public.

COMMONWEALTH OF PENNSYLVANIA, } ss :
City of Philadelphia, }

Richard H. Todd and William H. Todd, two of the defendants above named, being duly sworn, do*th* depose and say that they believe the statements contained in the foregoing answers to be true.

R. H. TODD.
WM. H. TODD.

Sworn and subscribed before me this fifteenth day of December, A. D. 1882.

[SEAL.] THOMAS B. PROSSER,
Notary Public, Philada.

Filed Jan. 10, '83.

RALPH L. GOODRICH, *Clerk.*

42 On January 12th, 1883, the following proceedings were had :

Comes L. H. Springer, by U. M. & G. B. Rose and J. F. Robinson, Esqs., his solicitors, and files herein his answer; which answer is as follows :

43 Comes said defendant, L. H. Springer, as administrator of the estate of William H. Todd, dec'd, and for answer unto said bill of complaint, saving all exceptions to all errors or insufficiencies therein contained, says :

That he has no knowledge of the said notes alleged to have been executed by William H. Todd to Isaac Cohen, nor of the alleged transfer thereof to the plaintiffs, nor of the suits, attachments, and judgments thereon, nor or the note said to have been executed by said Todd to plaintiff, Thos. H. Allen, nor of the judgment said to have been executed thereon, nor of the alleged subsequent proceedings under the same, and of all these matters the defendant demands proof.

Defendant has no knowledge of any conspiracy between defendant Smith and said Todd for the purpose of cheating, hindering, or delaying the creditors of said Todd.

Defendant says that he has no personal knowledge that defendant Smith and the said Todd bought the W. ½ of the N. W. ¼ of
44 sec. 8, T. 15 S., R. 1 W., in partnership, and he believes that said Smith is still the owner of an undivided half interest therein so purchased.

Defendant knows of no fraud connected with the said suit of said Smith against said Todd, but believes the same was lawful and just; has no knowledge of any fraud whatever between them.

Defendant believes the value of the lands are overstated in the bill, inasmuch as there were heavy incumbrances thereon at the time of Smith's purchase and when at the time he was already a half owner of the same.

Defendant admits the bringing of the former suit.

And defendant, having fully answered, prays to be hence dismissed with his reasonable costs and charges.

U. M. & G. B. ROSE.

J. F. ROBINSON, *Sol.*

STATE OF ARKANSAS, }
County of Chicot, } *sct:*

On this day personally appeared before me, Geo. T. Wilkinson, clerk of the Chicot circuit court of Arkansas, L. H. Springer, and made oath that the matters stated in the foregoing answer, so far as stated on his knowledge, are true, and so far as stated on information received from others he believes to be true.

45

L. H. SPRINGER.

Sworn to and subscribed before me.

Witness my hand and official seal this 4th day of January, 1883.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

Filed January 12, 1883.

RALPH L. GOODRICH, *Cl'k,*
By W. P. FIELD, *D. C.*

On March 1st, 1883, the following proceedings were had:

Come the complainants, by D. H. Reynolds, Esq., their solicitor, and file herein their replication, and by consent of parties it is ordered that this cause be set down for final hearing on the 17th day of October next.

Which replication is as follows:

Come said plaintiffs and, for replication herein, they say that they will maintain that their bill herein is true in fact and sufficient in law, and that the answers of the said defendants are insufficient in law and untrue in fact—at such time and place as the court may direct.

46

D. H. REYNOLDS,
Sol's for Complainants.

Filed March 1st, 1883.

RALPH L. GOODRICH, *Clerk.*

On September 28, 1883, the following proceedings were had:

On this day came the said defendants, Benj. Smith and L. H. Springer, as administrator of the estate of William H. Todd, deceased, and said Smith files here, by leave of court, his application to have the time for taking testimony herein extended, and the said application, being now duly considered, it is ordered that the time

given for taking testimony in this cause be, and the same is, extended for sixty days from this date.

And on the application of said Smith and L. H. Springer, as administrator as aforesaid, they are allowed to file an amendment to their answers herein, which is accordingly done.

Which amendment is as follows:

47 Come said defendant Smith and L. H. Springer, as administrator of the estate of William H. Todd, deceased, and, by way of amendment to their answer herein, they say that letters of administration were granted on the estate of said Todd to said defendant Springer by the probate court of Chicot county on the 4th day of August, 1879, and that said demands against said estate set up in said bill as existing in favor of said plaintiffs were not exhibited to said administrator, as required by the statute in said case made and provided, before the end of two years from the granting of said letters nor was either of them.

U. M. & G. B. ROSE.
JAS. F. ROBINSON.

I state that I believe the matters set forth in the foregoing paper to be true.

BENJ. H. SMITH.

Sworn to and subscribed before me September 28, 1883.

RALPH L. GOODRICH, *Clerk*,
By W. P. FIELD, *D. C.*

48 Filed Sept. 28, 1883.

RALPH L. GOODRICH, *Clerk*,
By W. P. FIELD, *D. C.*

On December 19, 1883, the following proceedings were had:

On this day came the plaintiffs, by D. H. Reynolds, Esq., their solicitor, and also came said defendant, by U. M. & G. B. Rose and James F. Robinson, Esq'rs, his solicitors, and it is by the court now ordered that time for the taking of testimony by said plaintiffs be extended for ten days from this date, and that for said defendant it be extended for ten days from the date and close of said ten days allowed to the plaintiff, and that this cause be set for final hearing on the first Tuesday in February next.

On February 8, 1883, the following proceedings were had:

This cause came on for final hearing, the complainants appearing, by D. H. Reynolds and John M. Moore, Esq'rs, their solicitors, and the defendant, by U. M. & G. B. Rose and J. F. Robinson, Esq's, his solicitors, and the court having heard the evidence and argument of counsel, whereupon, upon consideration thereof, it was or-

49 dered, adjudged, and decreed that the complainants' bill of complaint be dismissed for want of equity, and that the complainants pay all costs, for which execution may issue; and thereupon said complainants, by their solicitors, prayed an appeal from the decree herein rendered to the Supreme Court of the United States, which was allowed.

On April 12, 1883, the following proceedings were had:

Come the complainants, by D. H. Reynolds, Esq., their solicitor, and file herein their supercedeas bond, which is approved by the court; which supercedeas bond is in the words and figures following, to wit:

Know all men by these presents that we, Thos. H. Allen and John D. Adams, are held and firmly bound unto the defendants in the above-entitled cause in the full and just sum of fifteen hundred dollars, to be paid to the defendants, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

50 Sealed with our seals this 12th day of April, 1884. Whereas lately at a term of the circuit court of the United States for the eastern district of Arkansas, begun and held in Little Rock on the fourth Monday in October, 1883, on the 8th day of February, 1884, a day of said term, in a suit depending in said court between the complainants and the defendants in said above-entitled cause, a decree was rendered against complainants, and they having obtained an appeal in open court on the day said decree was rendered, which appeal was duly entered of record, to reverse said decree, by which appeal and entry thereof said defendants are admonished to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said complainants shall prosecute their appeal to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

THOS. H. ALLEN, [SEAL.]
By D. H. REYNOLDS. [SEAL.]
JNO. D. ADAMS. [SEAL.]

51 This bond is approved this 12th day of April, 1884.

HENRY C. CALDWELL,
District Judge.

Filed April 12, 1884.

RALPH L. GOODRICH, *Clerk.*

The following depositions were read on the final hearing in this cause:

52 "EXHIBIT C." (J. C., N. P.)

PHILA. 21*st*, *Oct.*, 1876.

DEAR SIR: Your letter of a few days since allude- to an arrest of James Webb for an alleged trespass on land claimed or worked or rented by the Chapman family. The lines and the corners of my lands of the Yellow Bayou survey is known and before any trespass could have been found against any one in your employ & working under your directions the fact of the boundary between myself and that of the Chapmans should have — ascertained by running the lines from known corners, one of which — now standing. The tree is a

gum, two foot over or more. Not far below, where the river is, Lewis Banks' outlet, to the woods south of his old house & not far east of the new house I built him last winter and 50 steps or so from the fence running east & west, is the corner to sections 11, 12, 13, 14 of town. 15 S., range 2 west, or the cedar corner post, not far from the gin of Bellevue place (Jackson Bowie or Capt. Smith can
53 show this corner). From either of these corners the lines *is* ascertainable as between myself and Chapman, or perhaps there are *are* other corners on Chapman's place or some other place likewise, which will afford a safe point of beginning. It is just one mile from Silas Brown's house, due south, before Chapman can claim a tree or saplin-. Capt. Smith has the map. The deed made by the receiver, Capt. Fry, of record in the court, will show the boundary of the way-land I bought at the sale in 1868, & recorded in 1868 or '9. I wanted to have had the lines run when last in Ark., but the water came over too soon for its consummation. Chapman wanted Capt. Fry to run out the lines between us, and I never had any objection to him, only his price was $10 per day & the county surveyor was only five, and it stood only on the cost of the job. It must now be run out to settle the disputed ter-itory and to settle the questions as to whether Webb was or not a trespasser. I have no doubt that Webb was on my land when he got the rails. See Capt. Smith about having it run out, & be sure to have it done, as it now assumes such *such* portions as the law can only
54 determine. You had and will have to apply to the county surveyor, and — your legal notice to Chapman when & where you will attend to resurv*a*y the land — such and such pieces as will meet the ascertainments of facts that occurred on the spot where the Piats were removed from; but while at it go further and see how the lines run as we pass Carlton place & the next below. Young Chapman only knew the lines as the freedm*a*n told him—their impressions of boundary. It is therefore indispensable to have the lines run out — correctly as we can. A distance of fifty-two years — since the public*k* surveys were made, and boards ought to be nailed upon a few trees to be a guide to freedm*a*n as to the laws when in the woods — rails or cut wood or timber for the use of plantations, either my own or Chapman's or others. Facts and truths hurt no one who means to do right. I have always been of opinion that Chapman *have* cut many trees and made rails of them on my land, and so told them. Now, the lines must be run and the truth ascertained. I feel sorry that the shipment of
55 supplies did not reach you as intended. I forwarded another draft, check on New York. I hope the last one has reached you. Evalyn & Willie set out in a few days to our home South—in about a week. Ben. is improving, but rather slow. Ninie cannot come before near the 1st Dec'r. If Ben. gets air the quinsy sets in & his throat shuts nearly up & he wheezes all night. The disease is a dreadful one; you never know when one is safe over it. All the rest of the family are well. I will at the earliest day attend to your su-t here & your boys' clothes, but for the future rely, & so tell Capt. Smith, on your cotton South for your wages. I am so

pressed here I shall be unable to pay you from Northern resources for your services. I shall want you to remain with me if it suits you. I cannot come South this winter, or, if I do, it will be for a very short time. My business here is of such a nature as to detain me. Write soon.

Your friend, WM. H. TODD.

P. O.—As Evalyn passes through Memphis, will call and see
56 James & Son about the supplies ordered and further supplies to be ordered. Write soon & often.

EXHIBIT "D." (J. C., N. P.)

P. S., *Feb. 13th*, 1877.

DEAR CAPT. SMITH: Can you so manage the cotton crop as to pay Mr. Mole any part of his wages for 1876 out of the proceeds? I have not funds North for that purpose.

Yours, very respectfully, W. H. TODD.

EXHIBIT "E." (J. C., N. P.)

PHILA., 13*th Feb.*, 1877.

DEAR FRIEND: I received your respected favor dated Jan. 8th, but I presume you meant Feb. 8th; so thinking, answer. I am sorry you are not so well. You will improve in health as the warm and pleasant weather comes along, and your spirits will move up in accordance to that of your improved health. Evalyn & Joe *is* now with me, and she is — very fine health, and so is Joe. I
57 think both Evalyn & myself stand it quite well, considering we all have our troubles, hers with bones often, Joe & mine pecuniarily, so all my children & their folks here are well and hope you will improve also. Now to busyness. I have not concluded an arrangement by which *by which* I am certain to be able to redeem Y. B. place. I am moving in that direction with a hope of success. Say to Willie Todd he is is no way, shape, or manner to interfere or disturb, alter, change, or countermand your management of Yellow Bayou place. If he does anything on the place it must and shall be under your directions and orders, so long as you choose to take charge of the place. My embarrassments or tightness in money matters gives me much uneasiness. If I had the command of funds I would at once send money to get Willie on here, but I may not feel able to remove him for a time; in the meanwhile he is not to interfere with you as manager of Yellow Bayou plantation. I have got my mill a full and complete appa-
58 ratus, which has pressed me to the girt and crippled my *my* resources so much that I am unable to remit you funds, as you have so often requested. Had I failed to get the mill under rent I could not have raised a dollar on the estate to redeem Y. B. or anything else. If I succeed in getting a loan (of which I have hope) I will spare you some to go thus far towards paying wages, but until that I am powerless. 6 of my houses are vacant and have been for a long time. I am now moving Heaven & earth to have

them rented—painting, papering, repairing, &c. Now, if under these circumstances you can continue to manage Y. B., nothing would be more acceptable to me, for I have every reason to believe this will be a favorable season for cropping and the hands or freedmen on the place will find no other place any better, and many worse in every respect, & most of them have made on the place what they are worth, and a rolling stone gathers no moss, and I would rather they would remain at the place, at least this year, and if I get the Walker place, and I can continue to own Yellow Bayou, I will remove the engine from the Walker place to the Y. B. place, which is a
59 good engine. If things work as I hope and believe they will I may be down in March or April (to redeem). My health is very fine at this time. I shall try everything under the sun to hold my old homstead, and, if so, the old hands will be fitly remembered and cared for. I have not space to call them by name—Banks, Browns, Turners, Tripps, Smiths, &c. I owe Tripp $15; Ned Smith owes me the same amount on last year's settlement; the books show the truth. I now have, and have since — met you on Yellow Bayou place, the utmost confidence in your integrity, industry, and wish to do well your duty, and send a request to Capt. Smith to try and arrange things South to pay you your wages, or a part thereof, out of the crops you have made, for the laborer is worthy of his hire, and perhaps he can put off some part of dues to others till a coming day; at least ask him, for me, to do so. If I had the means here I would not say a word to Capt. Smith, but I have not got it, and there will be no part of the mill rent out of $1,650 till Ap'l, & that is gobbled up in getting the mill in running order, with all my little
60 rent in the city. The weather is now extremely cold again, after two weeks of mild weather. I do not hear from any one whether court has or not adjourned. It is strange that one living 1,700 miles can suppose I could know if court was sitting or what was done at court. Ninie wrote me nothing at that time was done, but did not say if court was over or not, nor do you mention it if you had heard. I am sorry it is out of my power to send you nourishments that the feeble in health always stand in need of. I am continually mindful of your situation and deeply regret my inability to do as I feel it my duty to have done. After wishing you well & happy I wish you to try & bear with Willie and advise him he has a life to live and a living to make. I have written him and told him I could not always advise with him, that my voice must soon hush in death, and — will then take charge of his unbearable and unruly temper. He is now old enough to think before he further goes, and he can see and feel that other people have feelings and rights to act and to do as well as he; never sent or allowed him to go South to remove you from your place, and he knows it well, and he can do
61 and shall do better and keep himself clean & use proper language, and deport himself aright. If he reaches Phila. I will bind him to a trade, & he will have to walk to the chalk line or go to ruin. He is now old enough to do better & he shall do so. Evalyn's health has much improved since she came back from the South. She is very regular in her hours and seems always much

pleased to get a line from you, and, indeed, I was more than happy also. Evalyn looks prettyer and younger every day. I think I have now written all I know or can think of. If a crop is to be put in anyhow, — many crop-ers will then likely to be for the shares; then the renter's feed will again be required to run the crop-ers or sharers—or will there be any such? Give me some idea if it comes in the way.

I am now, very respectfully, yours,

WM. H. TODD.

EXHIBIT "F." J. C., N. P.

PHILA., 28*th June*, 1876.

62 DEAR SIR: I have received two letters from you, which I have not answered until now—all others have been answered. I have ordered by this market a few supplies from J. M. James & Sons, Memphis, directed to you at Luna Landing. I called — the insurance office, of which you had made mention, & paid $20 for you & took receipts for, which I will retain for you, & now enclose a $5 bill as required. The breaks in the levees—let them remain as they are; so also as to those in the Bellevue, as I have no funds to pay for putting them up just now. The fence must go up. See Capt. Smith, and between you & himself I think you can raise money out of some of the cotton in the gin you say was not attached to pay for hauling the rails to their place and putting them up to secure the crop from the stock. It is quite certain I have not funds North to pay every demand here and South also. The times never were worse than now to collect rents or to rent or sell property at any price; the continual — times are making things worse instead of better. I regret my inability to send you supplies sooner. I

63 hope you have weathered the storm thus far, as you seemed to be well from Mrs. Bolivar's last letter. Write and tell me all the particulars of how things are going on; are you out of feed and how much you need. How is your health and the hands; all their crops and how soon all may expect any one to furnish their ginning. I did not expect them to loose their growing '76 crop to gin the '75 one, particularly as it will not pay for their meat, selling so low. Mrs. Bloom got her funds at last, & all the family are well and have the highest opinion of your personal integrity, and so have I, and hope to hear of your good health and prosperity. As to the hands riding the mules to hunt rations, I leave it entirely to your own discretion. It might be admissible in some cases when they work well & come back sober & in good time. I believe I have fully answered, as far as I can. I will try and advance to supply your son's wants. We generally pay wages out of the crop you are try- to make. As I have been and am pressed for means here, will try and serve you, however, to the best of my ability.

Your friend, WM. H. TODD.

64 EXHIBIT "G." (J. C., N. P.)

As soon as the water leaves you and there is a prospect of a crop, if any there will be, then I will execute a mortgage to you to secure your wages. It is all I can do, as I am embarrassed and can barely get along with my troubles here and bring to a close the divorce. At all events, write me. How are you getting along? I wrote to Ninie to leave Willie on the place, but you seem to want him away, from a note from Evalyn; so he can return, if Ninie can arrange the matter of his fare, which she can do by telegraph from Memphis, if she gets that far on the way. I saw Evalyn last evening. She was looking remarkable well, but has had an awful*l* trouble with Barce again, but thus far has the best of him. Money matters are getting worse and worse daily, and I am extremely sorry I am unable to remit you money due you, but such is the fact; but will do all in my power to save you by mortgage on the growing crop, if you have any prospect. I saw your sister lately. She had her child with her; seemed quit- well. She was looking for you to return. I told her it was hardly possible for you to leave
65 unless I could be there during your absence; that I had failed to get ready to go as I expected. Tell Willie as long as he is on the place not to interfere with your business; that I am verry sorry to hear of his taking anything to drink to excess, or any other way. His father never smoked, chewed, snuffed, or drank to excess in 69 years, nor stole or l*y*ed or desc*i*eved any one. Tell him to do likewise, and give honor due to all persons, races, & colors, and respect his father's word & example, & he will do well; be industrious & energetic in everything he undertakes in life.

Yours truly, WM. H. TODD.

23.—I saw J. F. Robeson yesterday—is coming home.

PHILA., 19*th May*, 1877.

DEAR SIR: It has been some time that I have been intending to write you, but have delayed, hoping to have been able to say something more definite about the hope to redeem the Y. B. place, but am unable to speak positive- on that subject as yet. I enclose a check on New York for $20 for Mrs. Smith. It is her rent
66 money. Please hand it to her in person, not letting Capt. Smith know it, unless she herself tells him, and say to her, if she arrives at Memphis safe, telegraph me or Mr. Cooper and either of us will reply to her and by telegraph remit the funds necessary for bringing her home, and to come to my house direct on her arrival in this city. We, not having heard from her so long, are dreadful uneasy, fearing she is sick or her boy. Destroy this after reading over.

EXHIBIT "H." (J. C., N. P.)

PHILA., 30 *Dec'r*, 1876.

DEAR FRIEND: I have delayed answering your several letters for some days, wishing to have something definite to say on the subject of your remaining another year after the expiration of the present

one. 1st, I paid $11.35 for your policy, and enclose a receipt for you to sign. On its return you are to receive something over $3, which must be attended to nex- mo. Evalyn reached home all safe & now is with me on Gratz St., but may be absent for a purpose
67 a short time; she is not very well at times; was much fatigued with her journey home, but pretty well recovered. You are aware that Yellow Bayou (if a motion to set aside the sale on Jan. next fails) has to be redeemed before the 14th Aug., 1877. I have been trying to arrange with a gentleman in Norristown. We have had two meetings on the subject, and there is a mere possibility that I shall succeed. If I do I shall certainly want you to remain another year, for — the redemption takes place it will be in his name, and if it fails I shall want you, at all events, because the signs of the low water in the Missi. on 1st Jan. & dry swamp has always been indicitive of a good crop season & no damaging overflow. On this subject you will soon hear from me again. The mill is now ready to start, and it has cost me every dollar I could raise to finish it so as to run it, and the rent begins on 1st Jan., '77, at $1,650 per annum. I had to strain a point to make this point or to let the mill stand with ghastly — a dead letter without — & takes walking on every 6 mo. Now, in reference to the Ky. property: It is rented till March next, and it has a mortgage on it of $3,124, int. paid to Nov. last.
68 The owner wants half paid off, or $1,124, & the rest could remain by payment of int. If your proposed arrangement with Evalyn shall take place and it shall suit you & her, and you decline remaining South, and the houses & 270 acres of land, nearly all in a state of cultivation, rolling as it is, rich, & much of it in grass, should suit you I will try and do something with it to suit you & take possession of the place and run it, and if you could arrange the part of the required int. to be paid I would rent it, so as to ask you to pay the int. on the residue of the debt, making the rent $300 all told, or anything that would suit you and Evalyn. The land is fine for stock, as the place is well watered on each side and durable.

Mr. Fox, the gentleman who is *taking* of the advancing money on the Bayou place, is one of capital, & if we shall arrange it, it will go on without further interruption. I have been so hampered and pressed with liabilities that I could not furnish you with supplies, as I should have done, and to-day am still under press, but
69 still not without some hope of coming through at last; but 3 floods, an early frost, would cramp any one. I will do all that lies in my power to see Evalyn through her matter of divorce as early as possible. I am extremely sorry I cannot forward funds to make rails & repair the breaks in the levy on the place. Take the cotton seed and try and get something for yourself to eat, you & poor Willie. My rents here are hard to collect, & some houses are vacant, & they plead poverty & one is almost obliged to give them indulgence in cold, icy weather. The weather is icy cold, rainy, and inclement thus far. Rich'd is hauling for the mill, Dan is painting, and Bowles is doing tolerably well; Evalyn is the neatest housekeeper that ever I saw in my life, no purer-hearted soul ever lived, & I sincerely pitty her, to have so much trouble; but it is a

long night that has no day, & a long lane that has no turn, so I truly hope a better day will dawn for her. As soon as you get together, and whether you ever do or not, you take with you my best wishes for your earthly prosperity, whether on land or sea, with me or elsewhere. Mrs. Smith's letter reached me the 28, dated
70 the 7th ; how or why it had so tedious a passage I know not. Tell her Eva is with me & Evalyn & will remain till Tuesday, & leave for Chester Co., and is going to farming ; Beach is well & very smart indeed. My love to her & Ben., & the Capt., Mary, and my poor dear Willie. Write soon yourself and tell Willie to write to me. If you should go to Lake Village, & I want you to go and say to Major Robertson to try and — his utmost to set the sale of Yellow Bayou aside, and you write me what he says about it immediately after the interview. I have written him several letters & — no answer, and therefore the more needfull for your reply at the earliest day. Tell Ninie all are well except Den's wife, and she has had a long spell, but is better now. My letter is as long as the Paul's Epistle to the Corinthians. Please excuse it with all due respect.

I am, very respectfully, your friend,

WM. H. TODD.

EXHIBIT "I." J. C., N. P.

PHILA., *Aug.* 23*rd*, 1877.

71 DEAR SIR : Yours of the late date received. As no mention is made in it of matters touching the plantation affairs, but only alluding to things of your pay, I infer that you are taking but little interest in the progress of the crops that are now maturing, and that accounts for the news that reaches me that you are almost daily found at Lima or on the road, and continually grumbling about your wages & fault-finding with Capt. Smith, when you well know that the place you were employed to manage had the capacity to earn or produce for me from 3 to $5,000 per annum profit, if the floods did not prevent a reasonable state of cultivation. The floods of 1876, however, came in the way, and the full sum of sales did not far exceed the double of your wages. While you are not to blame for the providential failure of the crop, it at least furnishes the true reason of your non-pay't, of which you complain. It was no reason why, in law, your wages could be reduced and share the misfortune, but no sane man could complain of a non-pay't under such circumstances, and, indeed, many men would have found that would
72 make a reduction of their wages to help out with the general calamity, but none such things are asked or expected of you. When I was on the place and long after I left I heard no complaints of your industry and attention to business, but at the gin and at all points complaints come to me of your dissatisfaction, and, therefore, of your inattention. I have no mint of money ; I intended to pay out of cotton seed, and there was but little made & that was bound to go to pay a debt previously contracted, & I was sorry I had not the funds otherwise to pay you ; and in reference to the growing

crop, on which you seemed to want a lien for your wages, on reflection, I could not make a mortgage to you for all the crop, and that certainly would have placed me in your power beyond your claims, & you do not know the hang of my business or the general run of my affairs; hence I made it in the name and to secure Capt. Smith, to whom I can give general instruction as to the way of disposing of the crop proceeds, and if you, on the whole state of the case and our affairs, would rather leave the place than give it that assiduous
73 & close attention that you did when I was there, please make known your wishes to Capt. Smith & give him reasonable notice of your intention or wishes, and he will confer with you on the subject. I will write to him to wait at any time. I have no means outside of the crop to pay you your wages, which will be alluded to as well if you absent yourself as if you remain on the place. I wish no man to labor for me who is not satisfied. I have tro-bles enough outside without coming to wages on the place at home. I have paid your insurance as soon as I felt able & therewith send receipts. According to instructions in your letters, I continued the suit that had been instituted by Evalyn E. Bolivar for a dower, which will close in a few days, at a cost of $152, which you will stand charged with if you and her get married, and I have paid $120 or near that, or even more, for money advanced for insurance & boy & int. to your sister. The exact amount we will settle if all investments in the South —. If Evalyn & you fail to marry this time I will not charge you with that item of $152, but cer-
74 tain I would not made the expenditure if you and her had not asked me to do it. But you and her settle your own affairs in your own way. If you determine to leave Ark. let me know and I will strain a point to remit as much as will get you home to Phila. I defer-ed so long writing only to pay your insurance & push the divorce with cash payments, and other troubles called on me for all the cash I could raise, and debts pressing me here, all growing out of the floods for three years South. If you remain on the place remember I am to receive no more such letters from you or any one else alluding to my business. I do not deserve it & fear it will not work well with you in another direction.

Yours, &c., WM. H. TODD.

If my health continues as good as now I will visit Ark. this fall and winter and remain some time. Tell Willie I will write him soon a long letter & he must write me. Hope he and yourself are well and happy; give him my love and kind regards; tell him all are well here, except little Ben. has been lame, but is improving; he is getting the use of his feet again.

75 EXHIBIT "M." (J. C., N. P.)

Form 30 B. Duplicate.

On examination of the judgment index of the court of common pleas for the county of Philadelphia from Dec. 9, A. D. one thousand eight hundred and seventy-five (1875), to the tenth (10th) day of

December, one thousand eight hundred and eighty (1880), I find the following unsatisfied judgments entered therein within that period against—

——, Sept. 18, '79.
Wm., Oct. 30, '77.
Wm. C., June 12, '78; Sept. 13, '79.

WILLIAM H. TODD.

Jacob Weaver, ass'e, 2 M., '76, 1,113; D. S. B., May 25, '76, 3,000.
J. G. Bradshaw, 1 J., '76, 229; Ernst, June 24, —.
Kensington Nat. Bank, 4 J., '76, 964; Campbell, Sept. 23, 686.58.
J. A. J. Sheets, 1 J., '76, 1,319; Vanzant, Sept. 22, —.
John Sheldrake, 2 S, '76, 520; Thomas, Oct. 21, 406.01
J. A. J. Sheets, 3 S., '76, 142, Vanzant, Oct. 21, —.
Chas. Richardson, 2 S., '76, 1,175; D. S. B., Nov. 11, 54.00.
W. H. Yelter, 3 S., '76, 358; Leeder, Oct. 21, 104.40.
S. R. Blake *et al*, 1 S., '76, 765; Harttranft, Nov. 28, 162.15.
N. Shroveworth, 1 S., '76, 952; Campbell, Dec'r, —.
Wm. Gurner, ass'e, 2 D, '76, 980; D. S. B., Jan. 9, '77, 8,000.
S. L. Kirk *et al.*, 1 D., '76, 889; Hepburn, Feb. 24, '77.
D. Green Bower *et al.*, 3 J., '76, 1,442; McKinley, Feb. 27, 52.48.
Wm. Reech, 3 M., '77, 1,484; Graus, May 4, 63.77.
Thos. H. Allen & Co., 2 J., '77, 145; McMicheal, 1,628.24.
76 J. W. Cooper, 1 S., '77, 40; D. S. B., Sept. 24, '77, 6,300.
C. S. Schimp, 3 M., '78, 622; Graus, M'ch 11, '77, 22.75.
E. S. Johnson, 2 M., '78, 1,370; Graus, Ap'l 26, '77, 30.17.
J. G. Sanders, 2 M., '78, 1,384; Graus, Ap'l 26, '77, 34.54.
G. M. Bagley *et al.*, 4 J., '78, 52; Spaugen, Feb'y 18, '80, S. F.
E. G. Santee, 3 J., '80, 43; Morris, July 27, '80, 1,590.
Certified by—

JOS. B. THACKARA,
Per BROTHEY.

$150. Exhibit "M." J. C., N. P.

77 EXHIBIT "O." (J. C., N. P.)

Will of William H. Todd.

Be it remembered that I, William H. Todd, being of sound and disposing mind and memory, do make this my last will and testament, in manner and form following, to wit:

First. I direct the payment of all my just debts and funeral expense as soon as conveniently may be after my decease.

Second. I give and beque-th to my executors hereinafter named the sum of one thousand dollars out of the proceeds of my Southern property, to be invested and held by them in trust to pay the
78 income thereof to my daughter, Eva Todd, during her life, and after her death the said sum of one thousand dollars is to be divided among my other surviving children and the issue of my deceased children, the issue of each deceased child taking among them their parent's share.

Third. In the division of the residue of my estate, as hereinafter mentioned, my daughter Josephine Smith is to be charged with the sum of four thousand five hundred dollars, heretofore advanced by me to her out of her share of my estate.

Fourth. All the residue of my estate, real, personal, and mixed, whatsoever and wheresoever, I give, devise, and beque-th as follows, to wit: one-seventh absolutely to my daughter, Jennie Harrigan, her heirs, executors, and administrators; one other seventh part thereof to my daughter, Josephine Smith, her heirs, executors, and administrators; the othe five-sevenths parts thereof to my executors, hereinafter named, their heirs, executors, and administrators, in trust, nevertheless, for the following uses and purposes, to wit: in trust
79 as to one of the said seventh parts, to keep the same invested and pay over the net income thereof to my daughter, Eveline E. Bolivar, for and during all the term of her natural life, and upon her decease to divide the same among my then surviving children and the issue of my deceased children (other than *than* the issue of the said Eveline E. Bolivar), the issue of each deceased child taking among them their parent's share; in trust as to the other four of the said seventh parts, to take charge of the same, invest all moneys and keep the same invested, to pay taxes on real estate and keep the same in repair, and to collect the interest, rent, income, and profits thereof, and to pay over the net profits thereof as follows, to wit, the net profits one of the said last-mentioned sevenths are to be paid by my executors to my son, Richard Todd, for and during the term of his natural life, and after the death of my said son Richard the said last-mentioned one-seventh part is to go to his children equally; the net profits of one other of the said seventh parts are to be
80 paid by my executors to my son, Derringer Todd, for and during the term of his natural life, and after the death of my said son Derringer the said last-mentioned seventh part is to go to his children equally; the net profit- of one other of the said last-mentioned seventh parts are to be paid by my executors to my son, Willie Todd, for and during all the term of his natural life, and after the decease of my said son Willie the said last-mentioned seventh part is to go to his children equally; the net profits of the remaining seventh part are to be paid by my executors to my daughter, Eva Todd, for and during all the term of her natural life, and after the decease of my said daughter Eva the said last-mentioned seventh part is to go to her children equally. It is my will, and I hereby direct my executors, for the term of ten years after my death, to carry on the business of planting cotton in a regular farming manner, as heretofore carried on by me on the Yellow Bayou plantation and Bellevue, lying and being in Chicot county, Arkansas,
81 in township fifteen south of ranges one and two west of the principal meridian, on Mississippi river, and to cultivate all the tillable and available planting land therein, and to make no sale of either place until after the expiration of the said term of ten years.

Lastly. I hereby nominate and appoint Benjamin H. Smith, of Luna Landing, Schafer county, Arkansas, and James W. Cooper, of

the city of Philadelphia, to be the executors of this my will, and, hereby revoking all other wills by me at any time heretofore made, declare this to be my last will and testament, and I hereby empower my said executors to sell, either at public or private sale, all or any part of my real estate, except the said plantations until the said ten years have elapsed, and to make good and sufficient deeds for the part so sold to the purchaser free from all liability for the application or misapplication of the purchase-money.

In witness whereof now I have hereunto set my hand and seal the eleventh day of December, anno Domini one thousand
82 eight hundred and seventy-five.

WM. H. TODD. [SEAL.]

Signed, sealed, published, and declared by the testator above named as and for his last will and testament in presence of us, who, in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses.

NOTE.—The words "except the said plantations until the said ten years have elapsed" having been first interlined between the fourth and fifth lines from the top of this page.

JOSEPH L. HOPSON.
JOHN K. McCARTHY.
H. A. HAYWORTH.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

REGISTER'S OFFICE, *May* 31*st*, 1877.

Then personally appeared Joseph L. Hopson, John K. McCarthy, and H. A. Haworth, the subscribing witnesses to the foregoing last will of Wm. H. Todd, deceased, and, on their solemn oaths, did say that they were present and did see and hear William H. Todd,
83 deceased, the testator therein named, sign, seal, publish, and declare the same as and for his last will and testament, and at the doing thereof he was of sound, disposing mind, memory, and understanding, to the best of their knowledge and belief.

JAS. L. HOPSON.
JOHN K. McCARTHY.
H. A. HAWORTH.

Sworn and subscribed before me the date above.

H. L. KEYSER,
Dep. Register.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

REGISTER'S OFFICE, *May* 31, 1877.

I do swear that, as executor of the foregoing will and testament of Wm. H. Todd, deceased, I will well and truly administer the goods and chattels, rights and credits, of said deceased according to law, and that I will diligently and faithfully regard, and well and truly comply with, the provisions of the law relating to collateral inherit-

ances; that the said testator died on the 13th day of May, A. D. 1879, at 9 o'clock.

84 JAS. W. COOPER,
1927 *Spring Garden.*

Sworn and subscribed before me the date above, and letters testamentary granted unto —— ——.

H. L. KEYSER,
Dep. Register.

COMMONWEALTH OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

REGISTER'S OFFICE, *May 28th*, 1883.

I, Walter E. Rex, register of wills and *ex officio* clerk of the orphans' court for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, do hereby certify the foregoing to be a true and accurate copy of the last will and testament of Wm. H. Todd, deceased, together with the probate thereof, upon which letters testamentary were duly granted unto James W. Cooper on the 31st day of May, A. D. 1879, as the same remains on file and of record in this office.

In testimony whereof I have hereunto set my hand and
85 official seal, at Philadelphia, the date above.

[SEAL.] WALTER E. REX,
Register of Wills and Ex Officio Clerk of Orphans' Court.

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, William B. Hanna, president judge of the orphans' court of Philadelphia county, do certify that the foregoing certificate and attestation made by Walter E. Rex, Esq., register of wills and *ex officio* clerk of orphans' court, whose name is thereto subscribed and seal of said court affixed, are in due form and made by the proper officers.

In testimony whereof I have hereunto set my hand this the 28th day of May, in the year of our Lord one thousand eight hundred and eighty-three.

[L. S.] WM. B. HANNA,
President Judge.

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, Walter E. Rex, Esq., register of wills and *ex officio* clerk
86 of the orphans' court of Philadelphia county, do certify that the Honorable William B. Hanna, by whom the foregoing attestation was made and who has thereunto subscribed his name, was, at the time of making thereof and still is, president judge of the orphans' court of Philadelphia county, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 28th day of May, in the year of our Lord eighteen hundred and eighty-three.

[SEAL.] WALTER E. REX,
Register of Wills and Ex Officio Clerk of Orphans' Court.

This indenture, made and entered into between Wm. H. Todd and Amanda M., his wife, of the one part, and Josephine V. Smith, of Brooklyn, New York, of the other part, witnesseth: That for and in consideration of the sum of one dollar to the said Todd
87 in hand paid, the receipt whereof hereby acknowledged, and other good considerations moving thereto, the said Todd hath granted, bargained, and sold, and doth by these presents grant, bargain, sell, and convey, unto said Josephine V. Smith, her heirs and assigns, forever a certain piece of ground situated on Story street, West Phila., and bounded as follows, to wit:

Beginning at the distance of eighty-one feet from the southwest corner of Thirty-sixth and Story streets and running fifty-two feet southward, parallel with Thirty-sixth street, to a stake; thence twenty-two feet westward, parallel with Story street, to a stake; thence fifty-two feet, parallel with said Thirty-sixth street, to Story street; thence along the line of Story street twenty-two feet to the point of beginning, together with all and singular the appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said piece of ground, with all the appurtenances thereto belonging, unto the said Josephine V. Smith or her heirs and assigns forever. The title to the said ground, with all the ap-
88 purtenances thereto belonging, unto the said Josephine V. Smith, her heirs and assigns, forever the said Wm. H. Todd, for himself, his heirs, executors, as against all claims whatsoever will forever warrant and defend.

In witness whereof we, the parties of the first part, hereto set our hands and affix*ed* our seals this 13th day of August, in the year of our Lord one thousand eight hundred and sixty-six.

WM. H. TODD. [SEAL.]
A. M. TODD. [SEAL.]

Witnesses present:
RICHARD H. TODD.
WILLIAM S. NOLAND.

Exhibit "Q" No. 1. (J. C., N. P.)

STATE OF PENNSYLVANIA, *City of Philadelphia:*

I, William S. Toland, an alderman in and for said county, duly authorized to take *to take* acknowledgments, hereby certify that William H. Todd and Amanda M., his wife, came before me and acknowledged the foregoing deed to be their acts and deeds for the purposes therein contained, all in due form of law; and the said Amanda M. Todd, wife of the said W. H. Todd, *and she* on
89 being examined by me separate and apart from her husband, and the contents of the foregoing deed to J. V. Smith being

by me fully made known to her, freely and voluntarily acknowledged the execution of the foregoing deed without threat or coertion from her said husband.

In witness whereof I have hereunto set my name this seventh day of September, in the year of our Lord one thousand eight hundred and sixty-six.

September seventh, 1866.

WILLIAM S. TOLAND, *Alderman.*

Recorded in the office for recording deeds — & for the city & county of Phil'd'a, in Deed Book J. T. O., No. 96, page 1132.

Witness my hand and seal of office this thirtieth day of October, A. D. 1867.

J. T. OWEN, *Cl'k,*
Per M. MYERS.

90 EXHIBIT "Q" No. 2. (J. C., N. P.)

Quitclaim Deed (with Dower).

Know all men by these presents that William H. Todd and Amanda M. Todd, his —, for and in consideration of one dollar to me in hand paid by Mrs. Josephine B. Smith, wife of Captain Benjamin H. Smith, of Brooklyn, State of New York, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quitclaim to the said —— ——, heirs and assigns, forever the following-described real estate, situate in the county of Marion and State of Ohio, and described as follows—and in Bowling Green township, being part of the David Ross survey No. 172 and survey No. 9995 in the name of William Brownlee, in the Virginia military district—beginning at a beech and ash, northwest corner to the John Wimbush survey No. 10675; thence south eighty degrees west four hundred and four (404) poles to a stake in the line of the Nathaniel Sawyer survey No. 12192, forty poles south of the northeast corner of said Sawyer survey; thence south ten (10) degrees east one hundred and eighty-seven (187) poles to a beech, hickory, and
91 ash; thence north eighty (80) degrees east four hundred and two poles to a stak- in the east line of said (No. 10172); thence north ten degrees west one hundred and eighty-eight poles to the place of beginning, containing four hundred and sixty-five $\frac{68}{100}$ —, more or less.

In witness whereof the said William H. Todd and Amanda M. Todd, his wife, hereby release their right and expectantcy of dower in the said premises, hath hereunto set their hands and seals this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and sixty-five.

WM. H. TODD.
A. M. TODD.

Signed, sealed, and acknowledged in presence of us:
WILLIAM S. TOLAND.
JOHN P. WOLF.

[50-cent Internal Revenue Stamp.]

5—185

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

Be it remembered that on the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and sixty-five,
92 before me, one of the aldermen in and for the city & county of Philadelphia, personally came William H. Todd and Amanda M. Todd, his wife, being to me personally known — the grantor- in the foregoing deed, and acknowledged the signing and sealing thereof to be their voluntary act and deed for the uses and purposes therein mentioned; and the said Amanda M., wife of the said W. H. Todd, being examined by me separate and apart from her said husband, and the contents of said deed being by me made known and explained to her, as the statute directs, declared that she did voluntarily sign, seal, and acknowledge the same and that she is still satisfied therewith as her act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my hand and seal on the day and year aforesaid.

WILLIAM S. TOLAND, *Alderman.*

RECORDER'S OFFICE, MARION CO., OHIO.

This deed was filed and recorded on the 4th day of September, A. D. 1865, in vol. 34, page 56.

G. B. MERCHANT,
Recorder M. C., O.

Transfer-ed Sept. 4, 1865.

W. CRICKET,
A. M. C., O.

Exhibit "Q" No. 2. (J. C., N. P.)

93 EXHIBIT "Q" No. 3. (J. C., N. P.)

For the consideration of five hundred and thirty-five dollars to me in hand paid I have sold to Mrs. Benjamin H. Smith all goods—household furniture—in the house No. 1809 Montgomery avenue, not including the goods in the rear end five rooms, which *has* been made into a seperate house and now occupied by me, the undersigned. The goods and furniture in the front and main house that I have sold are in parts of the following articles, to wit:

The carpets on all the floors and entry & stairways, excepting only such of the carpets as were bought and paid for by Mrs. Smith herself and laid down at her expense; the looking-glasses, one in the parlor and one in the dining-room, dining table and chairs in that room, two settees, *etrigan,* and rocker & 6 or seven parlor chairs & two pitchers and the stands on which they set, the carpets on the 2nd-story reception & adjoining rooms, two bureaus & 4 chairs in reception-room & 4 in the room in the rear and adjoining
94 room, with two bedsteads, two washstands, and wardrobe in the reception-room, and all the bed clothing to each bed, & also the carpet on the front 3-story room, and all the dishes, plates,

and spoons and cooking utensils in the kitchen of said front house, & all other articles of value not especially named belonging to me in the front & main residence. The piano in the parlor, the ice-cooler in the dining-room, & all the furniture in the front & back 2nd-story rooms and other articles all belong to Mrs. Smith, she having furnished her room & paid for them herself, as well as the piano & ice-cooler; they never at any time belonged to me.

As witness my hand this 15 May, 1878.

WM. H. TODD. [SEAL.]

95 EXHIBIT "X." (J. C., N. P.)

(Attached is an envelope bearing postmark "Philadelphia, Nov. 21, 11 p. m., Pa.," stamped and directed to Mr. Reynolds, att'y-at-law, Lake Village, Chicot Co., Arkansas, marked Exhibit "X." J. C., N. P.)

PHILA, *Nov.* 21, 1882.

Mr. Reynolds.

D'R SIR: In reference to the matter of which you spoke in a letter to Mr. Mole, according to his statement made to my brother William, the same come- to me from him that you request valuable information, I wish to state to you that the heirs are in very moderate circumstances and to- poor to defray the expenses that might incurr to the affidavits. I- we had the money we would not hesitate; therefore we are compelled to ask you to send the money to facilitate the matter, in which we propose to tell the truth. Such truth will be valuable to the creditors. Answer this by sending a statement.

Yours, respectfully,

DERINGER TODD.

96 Affixed below is the signature of my bro., Wm. H. Todd.
Address: D. Todd, No. 1111 Division St., Philada., Penna.

EXHIBIT "Y." (J. C., N. P.)

(An envelope, stamped, postmarked, and directed to "Mr. Reynolds, att'y-at-law, Lake Village, Chicot county, Arkansas," postmark, "Philadelphia, Pa., Nov. 23, 11 p. m.)

EXHIBIT "Y."

PHILA., *Nov.* 23*rd*, 1882.

Mr. Reynolds.

D'R SIR: I hereby withdraw and recall the contents of the letter written to you by me. The same was said and written and caused to be done through prejudi*cial* and biasness caused by my brother Wm. making remarks not su*ti*able to the occasion; therefore the letter is mistakable and wholly unwarranted, and, on the other hand,

97 Capt. B. H. Smith has established the truth, so far as we know, and he never rec'd any compensation for his services from Wm. H. Todd, and in his claim he asserts his rights only, and the truth in the matter will only support the same, as we all know

he never was paid for his services; therefore *his* judgment he obtained was a righteous one. If that is what you wanted that is all we can give you. We can merely testify that he established the truth beyond a doubt.

DERRINGER TODD,
No. 1111 *Division St., Philadelphia, Pa.*

N. B.—Therefore, as I say, the former letter was written maliciously.

D. TODD.

EXHIBIT "Z." (J. C., N. P.)

(Stamped envelope bearing postmark, Lake Village, Ark., addressed to Erwin Mole, Esq., Boyersford, Chester county, Pennsylvania; envelope marked return to D. H. Reynolds, Lake Village, Chicot Co., Ark., if not called for in 10 days.)

98 EXHIBIT "Z." (J. C., N. P.)

LAW OFFICE OF D. H. REYNOLDS,
LAKE VILLAGE, ARK., *Nov. 2nd*, 1882.

Edwin Mole, Esq., Boyersford, Chester Co., Pa.

DEAR SIR: Yours of 24th ult. received; it will not be necessary for any of the heirs or yourself to come out here to give evidence; all evidence will be taken by deposition.

What I want to know is in regard to the consideration, if any, for the judgment for $8,000.

Smith makes out a claim for 8 y'rs' services in attending to Yellow Bayou & Todd's half interest in Bellevue, and swears it is due & gets judgment for it, & sells Todd's half interest in Bellevue for some $4,500, & holds claim against the estate for remainder. If Todd, in fact and in good faith, owed Smith the $8,000, then the suit was warranted, but if, in fact, Todd did not owe it or any
99 considerable part of it, then the judgment & all proceedings under — were void & can be set aside, & the half interest in Bellevue go first to pay Todd's creditors, & the balance go to the heirs.

The question is, Did Mr. Todd in fact owe Smith $8,000 at time he sued in 1877 & when judgment was rendered in the suit? This may be determined by learning, 1st, whether or not Smith did render the services he claims to have rendered; and, 2, if the services were rendered were they not paid for from time to time. Did Smith have charge of Yellow Bayou for Mr. Todd during the time from 1868 to 1877? Were not others employed by Todd who had control of Yellow Bayou & reported directly to Todd and not to Smith? If any parties had charge of Yellow Bayou for any of the 8 y'rs, who had such charge and for what years? Did Smith have charge of Yellow Bayou during the years you were there? Who shipped the Yellow Bayou crop? Did Smith, at any time prior to bringing the suit claim that Todd owed him for services? Did not Smith owe for the half interest in Bellevue, or some part of the pur-

chase-money; and, if so, how did he pay it and where? Was
100 he not given credit for any services he rendered in his settlement for the half interest he was to pay for in Bellevue? Was he allowed anything out of the crop on Bellevue from year to year to pay for the services in representing & looking after Mr. Todd's half interest? I have asked these questions by way of suggesting the information I need in the suit.

If anything was ever due Smith for these services & he was paid, then the suit was fraudulent; or, if anything was due and nothing like $8,000, then the suit was fraudulent. If he had no charge of Yellow Bayou for the time he charges for them, the suit was fraudulent. In thinking over the questions, facts will suggest themselves, & I can allege them in my suit to make out a case, & then I can take your deposition & the deposition of others to prove the facts as charged.

If the suit succeeds the creditors will get the benefit of it, & there is enough to pay all of them and more, & yours, of course, I will not overlook.

The question is not whether the heirs will testify, but is, what facts can they testify to that will show that Todd did not owe
101 Smith the $8,000 he sued for when he sued for it & when the judgment was rendered. You need not be at any expense, or, if any, at but little in finding out what the heirs know, & then, when the depositions are to be taken there will be some expense, but not much, & it will be paid as costs, & so you will not loose it in any event. You now understand what information I want from — & from the heirs, if they have it.

Respectfully, &c., D. H. REYNOLDS.

EXHIBIT "Z" No. 2. J. C., N. P.

PHILA., *Nov.* 23*rd*, '81.

Mr. Reynolds.

DEAR SIR: I hereby withdraw and recall the contents of the letter written by me to you. The same was said and written and caused to be done through prejudic*ial* and biasness caused by brother William making remarks not su-t*i*able to the occasion; therefore the letter is mistakable and wholly unwarranted; and on the other hand Capt. B. H. Smith has established the truth, so far as we know, and he never rec'd any compensation for his services from Wm.
102 H. Todd, and in his claim he asserts his rights only, and the truth in the matter will only support the same, as we all know he never was paid for his services; therefore the judgment he obtained was a rig-teous one. If that is what you wanted that is all we can give you. We can merely testify that he established the truth only and beyond a doubt.

Yours, DERINGER TODD,
No. 1111 *Division St., City.*

N. B.—The former letter was written maliciously.

D. TODD.

EXHIBIT "Z" No. 4. J. C., N. P.

PHILA., 20 *June*, 1877.

DEAR SIR: I received your letter after you visited me last. As I then told you, I had — and still — moving to get an additional loan on the mill property, and I have rec'd a line from Mr. Fox, of Norristown, asking me to get you to come up with me to his office to ask you some questions *to* my Southern plantations, the management of one of them having been under your supervision for two
103 years. It may & probably — give me material help to close some arrangement now pending; at least it will do no hurt. Now, therefore, if you could come to my house or notify me the hour on Friday or Saturday you could meet me at the New York junction on the Norristown railway all could go togeather to Norristown, and you could return the same evening, if need be, or stay with me & visit your father. I suggest the time, and if Mr. Fox suggests a different time I will telegraph you at your place. I have no other way of paying you a part of your debt but by the loan I am trying to make or get. Please answer at once if you can get off. All well. Mrs. Smith is home with me and all well. Crop favorable in the South.

Yours truly, WM. H. TODD.

EXHIBIT "Z" No. 5. J. C., N. P.

PHILA., *Oct. 24th*, 1875.

DEAR KIRK: I rec'd your letter relative to remaining until spring, but declining to stay another year, but spoke of talking mat-
104 ters over. As I have — go to-morrow to the coal land suit in Luzerne Co., & then again to Ky. on busyness needing my attention & then to return here to finish the mill & rent it, my time of arrival in Arkansas may be prolonged of neces-ity, & allow me to make this suggestion for your deli-eration: Suppose I am willing to tell you that you can leave Ark. on the 1st of July, 1876, or few days earlier, and come the Centen-ial & remain until the 10th Aug. & then return to your duties in Ark., would that meet with your approval? If you will decline this, then remain, pushing things with all your might until further notice, & if I retain you for the time in the spring will you remain until the 1st July & start the new crop? I will make no further arrangement, as I am at present advised, until I hear from you. Your father & mother seem desirous for you to remain, & if you should do so, our Jenny would visit Ark. again. I am glad to hear your health is improved.

My advice is to you to remain and try the old adage. There is a time in the tide of all men's affairs that if pushed leads to
105 fortune. Now is your time.

Your friend, WM. H. TODD.

Agreement to Take Depositions.

United States Circuit Court for the Eastern District of Arkansas.

ALLEN NUGENT & Co. *et al.*, Pl'tffs,

vs.

BENJAMIN H. SMITH *et al.*, Def'ts.

We agree that depositions may be taken in this case on behalf of the plaintiffs at the office of James Crowe, No. 400 Chestnut street, in the city of Philadelphia, State of Pennsylvania, before any officer, State or Federal, authorized by law to take depositions, without any commission or rule of court, between the hours of 9 a. m. and 4 p. m., on the thirty-first day of May, 1883, to be continued, if need be, at the same place and between the same hours from day to day until the depositions are completed, the opposite party being allowed to take depositions at the same place and time.

This fifth day of May, 1883.

D. H. REYNOLDS,
For Plaintiffs.

JAMES F. ROBINSON,
For Defendant.

106 STATE OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

I, James Crowe, a notary public in and for said county, do certify that the foregoing depositions of Mrs. Edwin Mole, Mr. Edwin Mole, Mr. William Kirk, Jr., Mr. Derringer Todd, Mrs. Jennie W. Bowles, Mrs. Josephine V. Smith, Mr. Richard H. Todd, and Mr. Michael Byrne were taken before me, and were read to and subscribed by them severally in my presence at the time and place and in the action mentioned in the caption, the said Mrs. Edwin Mole, Mr. Edwin Mole, Mr. William Kirk, Jr., Mr. Derringer Todd, Mrs. Josephine V. Smith, Mr. Richard H. Todd, and Mr. Michael Byrne, having been by me each separately and severally first sworn or duly affirmed by me that the evidence that they should give in the action should be the truth, the whole truth, and nothing but the truth, and their statements were reduced by me to writing in their presence, the counsell for plaintiff, and the counsel for the defendant, and the defendant in person being present during the examination.

Witness my hand and official seal this 19th day of June, A. D. 1883.

[SEAL.]

JAMES CROWE,
Notary Public.

107 *Plaintiffs' Bill of Costs.*

United States Circuit Court for Eastern District of Arkansas.

ALLEN NUGENT *et al. vs.* BENJAMIN H. SMITH *et al.*

Plaintiffs' Bill, Witnesses, and Testimony.

Mrs. Edwin Mole	$1 50
Mr. Edwin Mole, 4 days' mileage, &c.	12 00
Mr. Wm. Kirke, Jr.	3 00
For taking testimony, &c.	95 00
Total of pl't'ffs' costs	$111 50

Defendants' Bill of Costs.

Witness' fees, testimony, &c.:

Mr. Derringer Todd	$1 50
Mrs. Bowles	5 00
Mrs. Smith	9 00
Mr. R. H. Todd	3 00
Mr. Byrne	1 50
For taking testimony, &c., &c.	130 00
Total of defendants' costs	$150 00

Taxed by James Crowe June 19, 1883.

Filed June 23, 1883.

RALPH L. GOODRICH, *Clerk.*

108 *Deposition of Evelyn Mole.*

1 Q. State your name, age, and place of residence.

A. Evelyn Mole; thirty-nine years of age; I reside at 186 Master street, Philadelphia, in Pennsylvania.

109 2 Q. Are you acquainted with Benjamin H. Smith, one of the defendants in this cause, and what relationship do you bear to him?

A. Yes, sir; I am his sister-in-law.

3 Q. Are you the eldest daughter of William H. Todd, deceased?

A. I am.

4 Q. Were you familiar with the property of Wm. H. Todd situate in Chicot county, Arkansas? If so, state by what names his plantations were called.

A. Yellow Bayou and Belleview were the names of his plantations.

5 Q. Did Wm. H. Todd reside on either of the plantations?

A. During the winter months; not in summer.

6 Q. Which of the two plantations did he make his residence, as early as 1869, from 1869 to 1876, inclusive?

110 A. On Yellow Bayou.

7 Q. How was the Belleview occupied?

A. Captain Smith occupied it; Capt. Benjamin H. Smith, I mean.

8 Q. Was Capt. Benjamin H. Smith and your father partners in the Belleview?

A. They were.

9 Q. Did they own it jointly and operate it jointly as partners?

A. They did.

10 Q. Who managed the business of Wm. H. Todd and Capt. B. H. Smith in the Belleview plantation from 1869 to 1876, both inclusive?

A. Benjamin H. Smith.

11 Q. Did Wm. H. Todd, during the winter months, manage the plantation in conjunction with Capt. Smith?

111 A. He did.

12 Q. Who shipped and controlled the cotton, the product of the Belleview plantation?

A. Capt. Smith.

13 Q. Who resided on the Belleview plantation from 1869 to 1876?

A. Capt. Smith.

14 Q. Was there during that time a comfortable residence on the plantation?

A. He made it comfortable—I mean Capt. Smith.

15 Q. Do you mean to say that Capt. Smith made it comfortable, or that Todd and Smith —?

A. He, Capt. Smith, made it comfortable.

16 Q. Who paid for the making of it comfortable?

112 A. I know that Capt. Smith made it comfortable.

17 Q. Where did Capt. Smith acquire an half interest in the Belleview plantation?

(Objected to by defendant Smith.)

A. When he went down there first; I don't know the year at all.

18 Q. Did you live down there?

A. Only one winter season.

19 Q. Who controlled the crops of Belleview plantation from 1869 to 1876?

A. Wm. H. Todd and Benjamin H. Smith, exclusively.

20 Q. Which of the two was most active and most directly engaged in the gathering and sale of the crops?

A. Capt. Smith done all the shipping of the cotton for Wm. H. Todd.

113 21 Q. Who received the proceeds of the crop?

A. Capt. Smith received it for Mr. Todd according to his express directions; as a partner he managed everyting for Wm. H. Todd—that is, his half.

22 Q. State what you know about the family living expenses of Benjamin H. Smith upon the Belleview plantation. Did or did not the partnership of Todd and Smith supply the same?

(Objected to by def'd't Smith.)

A. I do not know.

23 Q. State what you know about Capt. Smith's charges for services in the management of Wm. H. Todd's interest in the Belleview plantation and in the Yellow Bayou plantation for the years 1869 to 1876, both inclusive.

(Objected to by def'd't Smith.)

A. My sister, Mrs. Smith, said to my father one day, Capt.
114 is going to charge eight thousand dollars services at your death, and in response he said, I don't consider I owe one dollar. In the presence of every brother and sister I got—six besides myself—heard him say the same thing.

24 Q. About what time did this conversation occur?

A. A year before he died.

25 Q. Who managed and controlled the Yellow Bayou plantation from 1869 to 1876, both inclusive?

A. I know some few; I don't know them all; Mr. Scott was one, Mr. Kirk, and Mr. Mole; there was another one; I don't know his name; Capt. Smith hired him for pa or Wm. H. Todd.

26 Q. Did or did not Capt. Smith have charge of Yellow Bayou plantation?

A. Only in the shipments of cotton.

115 27 Q. Did he manage the crops on Yellow Bayou?

A. No, sir.

28 Q. Did he have anything to do with it?

A. He did for the shipments of cotton and seen that they, the managers, done the things right. He always had managers on the place—I mean Yellow Bayou.

29 Q. State what you mean by the shipment of cotton?

A. Mr. Todd allowed him the shipments of cotton from Yellow Bayou to defray his expenses, as when he would tell him to do so.

30 Q. Did or did not Capt. Smith have an express contract for wages to be paid to him by Todd for his management of Todd's interest in the Belleview plantation and the Yellow Bayou?

116 A. There was an arrangement between Wm. H. Todd and Smith in reference to this eight thousand dollars to protect himself against his creditors, as his liabilities was too great to meet; not that he wished to defraud any person, but he was powerless to act, and, had he lived, he would have paid every debt off.

31 Q. Do you mean by the eight thousand dollars referred to in your answer to question No. "thirty" "the eight thousand dollars" which Smith sued for and attached the crops and personal property on Yellow Bayou in August, 187–?

(Objected to by def'd't Smith.)

A. I do.

32 Q. State what your father told you in reference to said attachment and claim for wages on part of said Smith.

(Objected to by def'd't Smith.)

A. The attachment was made to protect his indebtedness;
117 as for wages, he said he owed not one dollar, as I said before.

33 Q. When did your father die?

A. I think it was in month of May, 1879.

34 Q. Did he leave a will?

(Objected to by def'd. Smith.)

A. He did.

35 Q. When did Smith first claim wages or demand compensation for his wages?

A. He made his claim good at Wm. H. Todd's death. The arrangement made with Capt. Smith and Wm. H. Todd was to protect his children and himself against his debts or liabilities.

36 Q. Did or did not Mr. Todd and his sons reside on Yellow Bayou plantation and give attention to the crops from 1869 to 1877, inclusive?

A. Mr. Todd and son resided on the said Yellow Bayou plantation. The son, Wm. H. Todd, did not superintend any-
118 thing, as there was a manager to attend to the place. Mr. Wm. H. Todd, Jr., remained on — place up to the second year before the death of Mr. Wm. H. Todd, Sr., but he attended to nothing; he was a minor.

37 Q. What services, if any, did Capt. Smith render to Todd in the management and cultivation of Yellow Bayou during the years from 1869 to 1877?

A. The first year that B. H. Smith went South he managed Yellow Bayou—one year as a partner on Yellow Bayou; then afterwards he went to Belleview and remained there ever since.

Cross-examination by the defendant, BENJAMIN H. SMITH:

1 X Q. Are you Mrs. Mole, the wife of the Mr. Mole referred to as one of the managers or overseers of the Yellow Bayou plantation? If you answer "yes," please state when you were married to Mr. Mole.

119 A. In February, 1880.

2 X Q. Mrs. Mole, were you ever previously married?

A. Yes; to Cornelius Gallagher. I cannot tell the date.

3 X Q. Were you ever previously married to any one else besides Mole and Gallagher? If so, please give the name and the date.

(Objected to by plaintiff-.)

A. I decline to answer that question.

4 X Q. You say you are thirty-nine years of age. Please state at what age you were first married.

A. I do not know.

5 X Q. Were you not married to a man by the name of Rowan about twenty years ago?

(Objected to by plaintiff-.)

120 A. I decline to answer.

6 X Q. At what date did you first cease to live with your father's family?

(Objected to by plaintiff-.)

A. I decline to answer.

7 X Q. Did you live continuously with your father up to the time of his death?

A. Not at his residence until the last year of his life, but was there every other day visiting him, except when I went to Kentucky; that was the only time I was not there regularly. There was no specified time I staid away.

8 X Q. When were you in Kentucky, and how long did you stay?

(Objected to by plaintiff-.)

A. I do not know the year. I can't remember the date.

121 9 X Q. State about the time you made your visit to Kentucky, or went there.

A. I don't know.

10 X Q. Did you know that your father had a severe spell of sickness about 1874?

A. I do; and know who sat by his bedside. They were Mrs. Benj. H. Smith and *and* Mrs. Jennie Hanigan, who *was* now the said wife of Cornelius Boles; they are my sisters.

11 X Q. How long was your father sick, and did you visit him and wait on him?

A. Yes, sir; my father was sick for some time, bedfast, and underwent an operation by Professor Gross; I remained a portion of the time in the house with him and visited him up to the time of his recovery.

12 X Q. State, if you please, as near as you can about what time you were first married and went to housekeeping and left your father's family.

122 (Objected to by plaintiff-.)

A. I decline to answer; I don't know.

13 X Q. Were you ever married to a person by the name of Doctor Bolivar?

A. I was, but was lawfully divorced from him. I don't know the date of the marriage or divorce; it is here on record.

14 X Q. Were you ever married to a man by the name of Law?

(Objected to by plaintiff-.)

A. I decline to answer.

15 X Q. Were you ever married to a man by the name of Bunce?

(Objected to by plaintiff-.)

A. I decline to answer.

16 X Q. How many and which of your various husbands

123 are dead, and how many and *and* from which ones have you obtained a divorce?

(Ojected to by plaintiff-.)

A. I decline to answer.

17 X Q. Were you divorced from Mr. Gallagher, and, if so, when and where were you divorced?

(Objected to by plaintiff-.)

A. I decline to answer.

18 X Q. You say you are the sister-in-law of Capt. B. H. Smith; are you on friendly terms with Capt. Smith?

(Objected to by pl't'ff-.)

A. I never was unfriendly until I was wronged.

19 X Q. Have you not, since your father's death, been talking in a very harsh and unfriendly way about Capt. Smith?

A. Not through any maliciousness, but from injustice I think he has done me, being the daughter of Wm. H. Todd, deceased,
124 as all the rest of the heirs, except the said Mrs. Smith, the Capt.'s wife; the rest of the heirs have said the same as myself; thoroughly dissatisfied with the state of affairs; thought that they would be protected by the said B. H. Smith, according to their father's express wish.

20 X Q. Did your father leave any property outside of Arkansas? And, if you answer yes, please state where it was and what became of it.

A. Mill Creek was one of them; it is one mile above Manayunk, just outside of Philadelphia. Then he had a property on northeast corner of Gratz and Montgomery avenue at the time of his death; then property on Marlborough St. and Savery streets; then he had property on Sarah street.

21 X Q. What was the probable value of all the above property, and did Capt. Smith have anything to do with it?

125 A. I do not know what the estate was valued at. Capt. Smith had something to do with it as executor, and if there was any other arrangement between Capt. and Wm. H. Todd I don't know of it. He relinquished the executorship, so his wife said; that is as far as I know about it.

22 X Q. Where did your father, in his lifetime, make his home?

A. In the North in summer and South in the winter up to the time his death, very nearly.

23 X Q. Did he take his family with him to the South in winter, and did he go regularly every winter?

A. When he did go he took his wife and some members of his family—not always; my mother did not go regularly; she never went until after her mother died. He did not go regularly every winter, but his homestead was there.

24 X Q. How did you know that your father and Capt.
126 Smith were partners in the Belleview plantation.

A. Because he, Mr. Wm. H. Todd, told me so. Mr. Todd was my father.

25 X Q. How did you know they owned it jointly and operated it jointly as partners.

A. My father because needy during the war, and Capt. B. H. Smith loaned him some money—some few thousand—and *and* my father, Wm. H. Todd, not being able to pay him back in money, they made arrangements to go South—Mr. B. H. Smith and Mr. Todd. Mr. Todd said he would give Mr. Smith an interest in the South for the money he owed him, and from time to time my father

allowed him to pay the money from the crops—the purchase for the half of the Belleview, which he is now owner of.

26 X Q. How did you learn all this?

A. From my father.

127 27 X Q. When and where, and who was present when he told you all this.

A. He did not tell me, but told my mother; but I was present and heard it. I paid no attention to who was in the room, as they all know this affair as well as myself; it happened repeatedly at the house corner of Gratz and Montgomery avenue; it was about the time Mr. B. H. Smith left Mill Creek and went South, and I don't remember the year. Capt. Smith was not present at these conversations; he was South.

28 X Q. You say that your father, during the winter months, managed the Belleview plantation in conjunction with Capt. Smith. How do you know this?

A. From Mr. Wm. H. Todd's statements and from letters of business he wrote Capt. Smith telling him what to do with the money received for the shipment of cotton—whether to remit the money to him or do otherwise. I heard my father read the Capt.'s answers.

29 X Q. How do you know that Capt. Smith shipped and controlled the cotton raised on Belleview plantation, and state

128 the source of your information.

A. Because my father told me so—we all knew he was partner—and from letters he wrote to him as to what to do with the shipments of cotton.

30 X Q. Were you in the habit of reading the letters your father wrote Capt. Smith?

A. Not without it was his wish so to do. He never did — his business claim distinctly to his children; they all knew his business and read his letters; these letters were answers to my father's from Capt. Smith; they were thrown around, and that is how I knew that Capt. Smith managed as his partner.

31 X Q. Mrs. Mole, you say that Capt. Smith did all the shipping of the cotton for Wm. H. Todd. Do you mean to say that he shipped Mr. Todd's half as well as his own?

A. I know he shipped my father's half; as to his own, I

129 know nothing about it; it was my father's orders so to do in order to protect him from his debt-.

32 X Q. How long did this course of protection of your father from his debts by Capt. Smith last; when did it commence and when did it end?

A. There was no limitation; it commenced when he went down there and ended when he died.

33 X Q. When did Mr. Scott take charge of Yellow Bayou plantation?

A. He preceded Mr. Kirk; I don't know the year; I don't know Mr. Scott; I only know he was there from what my father and brothers and sister told me.

34 X Q. Do you know what year Mr. Kirk took charge of Yellow Bayou?

A. I do not; I know he was there; he was on there, on the plantation, when I was there.

130 35 X Q. State about the year you were there.

A. I don't know the year.

36 X Q. Was it between 1860 and 1870?

A. I do not know.

37 X Q. Was it between 1870 and 1880?

A. It was between 1869 and 1883; it was in some of those years, between them.

38 X Q. Is that as near as you can come to the date?

A. It is.

39 X Q. Do you know what time Mr. Mole went there?

A. I do not know any of the dates.

40 X Q. Do you know how long Scott, Kirk, and Mole, each or either, remained on Yellow Bayou?

A. I don't know the limitation.

131 41 X Q. You say that Capt. Smith had charge of Yellow Bayou; what was the nature of the charge?

A. The shipment of cotton only.

42 X Q. What was the nature of the arrangement between your father and Capt. Smith in reference to the eight thousand dollars you speak of in your answer to the question "No. 30" in the direct interrogatory? Please be specific in your answer.

A. It was to allow the claim to protect him against his creditors or his liabilities.

43 X Q. Did he owe this eight thousand dollars or any part of it to Capt. Smith?

A. He said he never owed one dollars; he said this a thousand times to myself and the other members of the family, except Mrs. Smith.

44 X Q. Do you know whether your father died owning

132 Yellow Bayou or any interest in Belleview?

A. He lost Yellow Bayou by the Halliday debt, and he had his interest in Belleview up to the time of his death; that was his own half interest; if there were any sales or buying in of the place, which I learnt from Mrs. Smith after his death, I know nothing about it, and none of the rest of the family knew until Mrs. Smith spoke about it; they were all thunderstruck, when they heard it.

45 X Q. Mrs. Mole, did you discover from the correspondence of your father laying around the house, or from any other source, that your father's interest in Belleview had been sold for a balance of the Halliday debt, and to satisfy a judgement against your father, and in favor of one James McMurray, and that these sales took place in his lifetime?

A. My father talked to Mrs. Smith about that affair; it was to be paid out of the cotton, as he thought.

133 46 X Q. When, where, and state all who were present when that conversation took place.

A. The conversation took place at Gratz and Montgomery Ave., Philadelphia; Mrs. Smith and my father and I was present at that time; I heard them talking about it.

47 X Q. Was there much talk in the family in regard to Capt. Smith's compensation for managing the Arkansas property?

A. Yes; it has been the cause of much dissatisfaction since father'-death.

48 X Q. Do I understand you to say that there was no dissatisfaction or talk previous to your father's death?

A. They had no chance to be dissatisfied, because my father never admitted that he owed it; in response, he said he never owed one dollar.

134 49 X Q. Do you know when Capt. Smith'- judgement for the eight thousand dollars was obtained?

A. Yes; I heard him speak of it, and he said, as I before told you, it was for his protection.

50 X Q. Do you know whether there was any other judgements in Chicot county, Arkansas, at that time or after—I refer to the date of the rendition of the judgement?

A. I know of none other except the McMurray affair; I know of none other.

51 X Q. Don't you know that the commission house of Juncy and Gillis, of New Orleans, had a judgement at that time?

A. Only what he talked about to the rest of the family.

52 X Q. How many years did Mr. Todd and his son Willie reside on Yellow Bayou plantation?

135 A. I do not know; he went there when a young boy with his mother, and came back a young man; I don't know the dates.

53 X Q. How long did your mother stay there?

A. That I don't know.

54 X Q. Did she stay one year or five, or more or less? Please state about the time.

A. I don't know.

55 X Q. How long did your father stay there?

A. I don't know; he was a delicate man, and did not stay long in the winter months; his complaint was against him.

56 X Q. Did your brother remain here continuously, winter and summer; and, if so, how long did he stay there?

A. I don't know the length of time; he stayed there for a season, until father sent for him; he had chills; that was during Mr. Mole's stay at the place, because I know Mr. Mole waited

136 upon him, and Mr. Mole came away, leaving him there, after which time his father sent for him.

57 X Q. Mrs. Mole, what was the occasion of your visit and stay in Arkansas; was or was it not to avoid legal process here in Philadelphia?

(Objected to by pl't'ff-.)

A. The reason I went was because my father invited me; he had no one to take care of the house; there was no legal process against me.

58 X Q. Mrs. Mole, have you received any money, property, or

other thing, or the promise of any such, from the plaintiff- in this suit?

A. None whatever.

59 X Q. Have you received any letters, you or your husband, from the pl't'ffs in this suit, or any agent or attorney of theirs, holding out any inducement or prospect of profit to yourself or husband in this suit?

137 A. I have received no letters; my husband has received business letters from General Reynolds, who he wrote to in reference to his debt, which was duly *own* to him by Wm. H. Todd, nothing further; one of his letters was taken out of Mrs. Smith's hands, who I permitted to read so as to show her there was nothing improper between Mr. Reynolds and Mr. Mole; I wanted to satisfy her, and he would not hand the letter back to me and he took it to D. Billeaxny, on Walnut street, to learn from *it* what trouble he could make out of it. I wrote to Mr. Reynolds explaining it—how he had his correspondence; it looked to me as it was not proper.

60 X Q. Did you tell any of your brothers and sistere that if the plaintiffs succeeded in this suit they would get a thousand dollars apiece?

A. I have not seen any of my family since the suit was commenced. I did not tell them so, but they received Mr. Reynolds' letter;

138 the Reynolds letter was taken from Mrs. Smith's hands by her brother Willie; directed to Mr. Mole as a creditor.

61 X Q. Did you not send for some of your brothers and sisters between last July and last November and tell them that if this suit succeeded they would get one thousand dollars apiece.

A. No; I never did, only one of them wanted me to get Reynolds' correspondence, and, if I could so do it, I would be the recipient of some money, as I was poor and would need it; there was a bribe, but I did not do it.

MRS. EDWIN MOLE.

Sworn and subscribed before me this 31st day of May, A. D. 1883.

JAMES CROWE,
Notary Public.

Adjourned until 2.30 o'clock.

139 *Edwin Mole.*

EDWIN MOLE, being duly sworn, doth depose and say:

62 Q. State you name, age, and place of residence.

A. Edwin Mole; aged about forty-two years; I reside at Columbia, in Pennsylvania.

63 Q. Are you a native of America? If not, state your nationality.

A. I was born in England.

64 Q. Did you ever reside in Chicot county, Arkansas; if yes, when did you go there and how long did you remain?

A. I went in February 14; I left Philadelphia on that day, in the year 1876.

65 Q. When did you reach your stopping place in Arkansas?

140 A. On the following Sunday after the 14th.

66 Q. For what purpose did you go to Arkansas?

A. As overseer of plantation.

67 Q. State what plantation, and for whom and by whom you were employed.

A. Yellow Bayou plantation. I was employed by Wm. H. Todd, now deceased.

68 Q. Was Wm. Todd on the plantation when you arrived there?

A. Yes, sir.

69 Q. What other member or members of his family were there?

A. One of his daughters, who went by the name of Mrs. Bolivar at that time.

141 70 Q. Did you or did you not take immediate charge of the plantation, when you arrived, as manager?

A. The following morning; it was late when I arrived in that evening. I took charge the following morning.

71 Q. What was your contract for wages, &c., with Wm. H. Todd for your services as manager?

A. Fifty dollars per month for board, washing, and lodging.

72 Q. Who paid your expenses to Yellow Bayou from Philadelphia?

A. Cornelius Bowls bought the ticket and gave me some little cash to pay my expenses for Mr. Todd.

73 Q. Was or was not these expenses paid as a part consideration for your services?

A. No; I was to have that extra.

142 74 Q. How long did Mr. Todd remain there after your arrival?

A. Until April 9th, 1876.

75 Q. Did you have exclusive charge of the Yellow Bayou plantation?

A. All, with the exception of the shipment of the crops from the landing.

76 Q. What instructions had you from Mr. Todd relative to the delivery of cotton, at the landing or otherwise?

A. Either orders from Mr. Todd or Mr. Smith from Mr. Todd. I was ordered to deliver the cotton from Yellow Bayou to Mr. Smith.

77 Q. Who was manager of Yellow Bayou plantation during the cultivation and gathering of the crops of 1875?

A. Mr. Kirk, as far as I know.

143 78 Q. What information had you on this subject?

(Objected to by def'd'ts.)

A. I don't know that I had any information of Kirk. All I know was that I was to take his place and do the same as he had been doing on the same plantation.

79 Q. Had the crops of 1875 been gathered and ginned before you got there?

A. I don't remember that there was any to be gathered. There was some to be ginned, bailed, and shipped off.

80 Q. Please state how and when you disposed of the remainder

of the crops of 1875, which was on the plantation at the time you got there and took charge? Refresh your memory from any memoranda or book you have.

144 A. Upon referring to a memoranda book, which I have with me, I find on March 25 I delivered at Belleview Landing—Mr. Todd was there at the same time—fourteen bales of cotton, marked D. H. R. On April 15th I shipped to Lima eighteen bales, marked B. H. S.; one bale to a man by name of Traywich, marked T.

81 Q. Upon whose direction did you deliver the cotton to Traywick?

A. I can't be positive whether it was Todd or Mr. Smith.

82 Q. State the next delivery you made.

Adjourned until Friday morning, June 1st, at 9 o'clock a. m.

145 FRIDAY, *June* 1—9 o'clock a. m.

Mr. MOLES' examination continued:

A. April 17th, two bales taken by the name of E. E. Bolivar; on May 1st, four bales of cotton ordered from Capt. Smith for C. Cohn; on June 22nd, five bales shipped for I. H. Robinson; on June 22nd, same day, six bales marked B. H. S.; the first lot delivered on the 22nd of June, two thousand one hundred and forty-five pounds; the second lot, on some day, thirteen hundred and seventy pounds on June 24th, one bale marked L. C. B., four hundred and thirty-five pounds. I can't say where this lot was delivered on June 24th. On August 5th, shipped by the Helena one hundred and forty-eight sacks of cotton seeds; on August 12th, delivered to Belleview Landing two hundred and ninety sacks cotton seed; on August 24th, Belleview Landing, three hundred and four sacks of cotton seeds.

82½ Q. State what the marks B. H. S. meant, and to whom were those bales so marked delivered?

146 B. H. S. means Benjamin H. Smith; delivered by Edwin Mole to B. H. Smith.

83 Q. What do the marks L. C. B. mean, and to whom was the bales so marked delivered?

A. I don't know.

84 Q. Do you know upon whose order or direction that delivery was made?

A. I don't remember; I could not say whether it was Mr. Todd or Mr. Smith.

85 Q. The two bales delivered to E. E. Bolivar—state if you remember to whose order or by whose authority it was delivered.

A. I don't remember any further about —. Mrs. Bolivar had the two bales; I can't say no more about that.

86 Q. In your answer to question "eighty" you state that on March 25th you delivered at Belleview Landing fourteen bales of cotton marked D. H. R., state if you know whose initials D.

147 H. R. are, and to whom was the fourteen bales of cotton so marked delivered?

A. I don't know whose initials it stood for or where the cotton went to afterwards from the landing.

87 Q. Who kept the landing?

A. I suppose by Benjamin H. Smith, who was on Belleview plantation.

88 Q. In your answer to question "eighty" you state that on April 15th you shipped to Luna eighteen bales of cotton marked B. H. S.; to whom was this cotton delivered?

A. Don't know; it was marked B. H. S.

89. Was or was you not directed by Mr. Todd to haul the cotton out from Yellow Bayou plantation and deliver it to B. H. Smith or as he, Smith, might direct?

(Objected to by defendants Smith.)

A. Yes.

148 90 Q. Did you or did you not obey those instructions?

A. Yes.

91 Q. Was any other person than Mr. Todd or Capt. B. H. Smith authorized to direct you in the shipment of cotton?

A. Not any one.

92 Q. Was or was not all the cotton marked "B. H. S." delivered at the landing by you either to or by authority of B. H. Smith?

(Objected to by def'd'ts Smith.)

A. It was to Todd or B. H. Smith, either one.

93 Q. To whom was the cotton seeds referred to delivered?

A. It was delivered to B. H. Smith at the landing.

149 94 Q. Was or was not the cotton and cotton seed referred to in your former answers as having been hauled out and delivered by you a part of a crop produced on Yellow Bayou plantation in 1875?

(Objected to by defendant Smith.)

A. Yes; in 1875.

95 Q. Were you or were you not the manager on Yellow Bayou plantation during the making and gathering of the crops of 1876?

(Objected to by def'd't Smith.)

A. Yes.

96. Q. Were or were you not the sole and exclusive manager on the place?

(Objected to by def'd't Smith.)

A. I was sole manager on the place.

150 97 Q. Did any other person than Wm. H. Todd have authority or any control over you?

A. No.

98 Q. Did any other person than Wm. H. Todd attempt or pretend to have any control over your management?

A. No; only Wm. H. Todd, Jr., wanted to control, but orders was from his father that he had nothing to do with the management

and should have nothing to do with controlling my affairs on the plantation.

99 Q. State what you did with the crop of — produced on Yellow Bayou plantation in 1876 and gathered in the fall and winter of 1876 and 1877.

(Objected to by def'd't Smith.)

A. The portion of Mr. Todd's share was delivered wherever orders came to have it shipped to.

100 Q. How did orders come to have it shipped?

151 A. Either from Wm. H. Todd or B. H. Smith.

101 Q. State, if you can, when you commenced delivering cotton out of the crops of 1876, and to whom you delivered it. If you have any memoranda account refer to it.

A. As near as I can get at it, it was October 4, at Belleview Landing; it was marked $\frac{\text{B. H. S.}}{100}$

102 Q. How many bales did you ship marked $\frac{\text{B. H. S.}}{100}$ on 4th of October, 1876, and what was the weights.

A. Eleven bales, weighing in all four thousand five hundred and eighty pounds.

103 Q. Give, if you can, the weight of each bale.

A. Four hundred pounds, two hundred and ninety pounds, four hundred and thirty-five pounds, four hundred pounds, four
152 hundred and ninety pounds, four hundred and sixty pounds, four hundred pounds, three hundred and ninety pounds, four hundred and forty-five pounds, four hundred and ninety pounds, three hundred and eighty pounds; that's all.

104 Q. State when and to whom you made the next delivery of cotton.

(Objected by def'd't Smith.)

A. On October 13th, marked $\frac{\text{B. H. S.}}{100}$ and delivered to Luna Landing.

105 Q. How many bales in this delivery of October 13th, and what was the weight of each bale?

A. Five bales; weight of bale, four hundred and twenty pounds; next bail, four hundred pounds; next, four hundred pounds; next, four hundred pounds; next, four hundred pounds; the total weight of the bales, two thousand and twenty pounds.

106 Q. When did you make the next delivery and to whom?

(Objected to by def'd't Smith.)

153 A. On December 8th, delivered to Belleview Landing ten bales, marked $\frac{\text{"B. H. S."}}{\text{Y. B.}}$

107 Q. Can you give the weights of the ten bales delivered on the 8th of December, 1876? If yes, do so.

A. I can; four hundred and twenty pounds—thirty pounds; next,

four hundred and sixty pounds; next, three hundred and seventy-five pounds; next, three hundred and eighty pounds; next, four hundred and fifty pounds; next, three hundred and eighty pounds; next, three hundred and sixty pounds; next, three hundred and forty-five pounds; next, three hundred and ten pounds; next, three hundred and thirty pounds, making a total of three thousand eight hundred and ten pounds.

107½ Q. Can you state when and to whom you made the next delivery? If yes, do so.

(Objected to by defendant Smith.)

154 A. On December 23, 1876, five bales, all for Belleview Landing.

108 Q. Can you give the marks and weight- of the five bales delivered December 23, 1876?

A. I can; first, three hundred and forty pounds; next, four hundred pounds; next, four hundred pounds; next, four hundred pounds; next, four hundred pounds; total weight, nineteen hundred and forty pounds, marked $\frac{\text{B. H. S.}}{\text{Y. B.}}$

109 Q. Where and to whom were the five bales mentioned in your former answer delivered?

A. At Belleview Landing.

110 Q. Can you state the date, number of bales, marks, and weights of the next shipment you made? If yes, do so.

(Objected to by def'd't Smith.)

155 A. On January 10, 1877, five bales, marked $\frac{\text{B. H. S.}}{\text{Y. B.}}$ The weight of each bale: First bale, three hundred and ninety-five pounds; next one, four hundred and twenty pounds; next one, three hundred and ninety pounds; next one, three — and ninety pounds; next one, three hundred and ninety pounds; total weight, nineteen hundred and eighty-five pounds.

111 Q. Can you state where and to whom the five bales of cotton described in your answer to question one hundred and ten were delivered? If yes, do so.

A. At Luna Landing, marked $\frac{\text{B. H. S.}}{\text{Y. B.}}$ I suppose it must be Smith.

112 Q. Can you give the date, number of bales, and weights of the next shipment you made? If yes, do so.

(Objected to by def'd't, Smith.)

A. Delivered to Belleview Landing six bales of cotton marked $\frac{\text{B. H. S.}}{\text{Y. B.}}$—delivered on February 3, 1877. The first bale weighed four hundred and thirty-five pounds; next one, four hundred
156 and fifteen pounds; next one, three hundred and thirty pounds; next one, three hundred and seventy pounds; next one, three hundred and forty pounds; and next, two hundred and

fifty pounds; the total weight, twenty-one hundred and forty pounds.

113 Q. Can you give the date, number of bales of cotton, the marks, weights, and to whom and where delivered in your next shipment of cotton? If yes, do so.

(Objected to by def'd't, Smith.)

A. One bale to Wash. Clark, four hundred and ten pounds, to the best of my knowledge. This was on same day as delivery of other bales, viz., Feb'y 3, 1877.

114 Q. Can you state the number of bales of cotton, the marks, weights, to whom and where delivered in your next shipment? If yes, do so.

(Objected to by def'd't Smith.)

157 A. On March 20, 1877, hauled to Belleview Landing thirteen bales of cotton marked "B. H. S.," the first bale weighing four hundred and thirty pounds; next, four hundred and thirty pounds; next, four hundred and thirty-five pounds; next, four hundred and fifteen pounds; next, three hundred and forty pounds; next, three hundred and ninety pounds; next, four hundred and ten pounds; next, four hundred ninety-five pounds; next, four hundred & seventy-five pounds; next, four hundred & seventy-five pounds; next, four hundred & twenty pounds; next, four hundred & thirty pounds; next, four hundred twenty pounds; total weight, five thousand five hundred and sixty-five pounds.

115 Q. In your answer to question one hundred & fourteen you state "that you hauled the thirteen bales described to Bellevue Landing;" did you deliver said cotton at Bellevue Landing; if so, to whom?

A. I delivered them, according to orders, to B. H. Smith.

158 116 Q. Can you state when, where, and to whom you made the next delivery of bales of cotton? If yea, do so, giving the number of bales, the weights, and marks.

(Objected to by def'd't Smith.)

A. On April 6, 1877, I delivered to Wm. H. Todd, Jr., one bale four hundred and sixty pounds, and one two hundred and forty pounds went away the same time, which he said he was to take by orders from Mr. Smith and wife. They were taken from Yellow Bayou plantation; I believe there was no marks on it.

117 Q. Who produced or out of whose crop was the two bales last referred to?

A. The one bale of four hundred and sixty pounds, Adam White's genning; the next bale of two hundred and forty pounds, Alfred Parrish'- genning.

159 118 Q. To whom did the two bales of cotton last referred to belong?

A. That belonged to Wm. H. Todd.

119 Q. Can you state the date, description, and quantity of any other product of the Yellow Bayou plantation which you, as agent

of Wm. H. Todd, delivered to any person? If yea, state what it was, when and to who- delivered.

A. No; not as I remember.

120 Q. Was or was not there any cotton seed produced on said plantation that belonged to Wm. H. Todd out of the crop produced in 1876? If yea, state what disposition you made of it.

A. Yes; I delivered to Bellevue Landing seventy-five sacks of cotton seed for B. H. Smith.

121 Q. Was there any other cotton, cotton seed, or other product of Yellow Bayou plantation belonging to Wm. H. Todd and delivered by you as his agent to any person? If yea, what was it and
160 to whom delivered.

A. Yes; three bales of cotton, July 7, 1877, delivered to Luna Landing, marked "$\frac{\text{B. H. S.}}{\text{F. B.}}$" weight of bale three hundred and eight pounds, three hundred & sixty-five pounds, four hundred and eighty-five pounds; total weight, twelve hundred & thirty pounds.

122 Q. Is that all?

A. All that I know of.

123 Q. Can you state the aggregate number of cotton bales produced in the crop of 1876 on the Yellow Bayou plantation to the share or part of Wm. A. Todd? If yea, please do so.

A. Sixty-one bales, as near as I can get at it.

124 Q. Can you state the aggregate number of bales of cotton which came into your hands as manager on Yellow Bayou plantation out of the crop produced on said plantation in the
161 year 1875, as the part or share of and belonging to Wm. H. Todd? If yea, do so.

A. Fifty-one bales.

125 Q. Within to whose control did you deliver, as the agent of Wm. H. Todd, the cotton bales marked "$\frac{\text{B. H. S.}}{100}$" and cotton bales marked "$\frac{\text{B. H. S.}}{\text{Y. B.}}$," as described in your foregoing answers?

A. To the best of my knowledge, to B. H. Smith—into his control.

126 Q. Who was manager on the Yellow Bayou plantation during the planting and cultivating season of the year 1877?

A. Edwin Mole.

127 Q. Did or did not Edwin Mole have full charge of said plantation during the period referred to in question one hundred and twenty-six?

A. He did until September.

128 Q. Are you the Edwin Mole referred to?

162 A. I am.

129 Q. Were you subject during said period to the control or orders of any one except Wm. H. Todd in the management of the affairs of the plantation?

A. Not any but to him and his agent, B. H. Smith.

130 Q. What agency or control did Wm. H. Todd direct you to obey as coming from B. H. Smith?

A. To ship the cotton, cotton seed, or any other produce that was on the place where he gave orders.

131 Q. In respect to the shipment of cotton and other produce of the Yellow Bayou plantation, did you submit to the control and orders of B. H. Smith?

A. I did.

132 Q. When did you leave Yellow Bayou plantation?

163 A. The first Sunday in Sept., 1877, to the best of my knowledge.

Adjourned until 2 o'clock.

133 Q. Was there a crop growing on Yellow Bayou plantation when you left it? If yea, state the character of the crop, &c., &c.

A. Yes, cotton; some little corn.

134 Q. About how many acres in cotton, and was the prospect good or bad for a crop?

A. Not a very bright prospect for a big crop. I can't tell how many acres there was.

135 Q. How did the prospect for a crop, when you left there in 1877, compare with the prospect *with* a year before that time?

A. Somewhat better.

136 Q. Was the acreage in cotton in 1877 larger or smaller than the acreage in cotton in 1876—the year previous?

—. To the best of my knowledge the acreage was somewhat more.

164 137 Q. Were you on the Yellow Bayou plantation during the month of August, 1876?

A. Yes; I was there.

138 Q. State what you know, if anything, about the levy of an attachment upon the crop, mules, and other personal property at the suit of B. H. Smith against Wm. H. Todd.

(Objected to by defendant Smith.)

A. Well, I believe there was an attachment made upon the crops and stock; that is about all.

139 Q. Were the mules or other personal property of Wm. H. Todd taken possession of by the sheriff or other officer, and taken out of your possession as Todd's agent?

(Objected to by def'd't Smith.)

A. No; they were not taken off place.

140 Q. State what was done at the time of said levy by the sheriff or by Benjamin H. Smith in relation to said personal property.

165 (Objected to by defendant Smith.)

A. The sheriff was over and took an attachment of the stocks and crops, and they still remained on the plantation, and he then went off about his business, and that is all I know about it.

141 Q. Were you upon the said Yellow Bayou plantation during

the month of December, 1876, in charge and in pos-session, as the agent of Wm. H. Todd?

A. I was still there.

142 Q. Did the sheriff, Benjamin H. Smith, or Wm. H. Todd, at that time, give you any instructions as to the stock or other personal property that had been attached?

(Objected to by defendant Smith.)

A. No; I had no such orders, to the best of my knowledge.

143 Q. Was or was not Wm. H. Todd indebted to you for your services in the spring of 1877?

166 Objected to by defendant Smith.

A. Yes.

144 Q. Did or did you not call upon him for a mortgage upon the crop upon Yellow Bayou to secure you in your wages?

(Objected to by defend't Smith.)

A. He promised to execute a mortgage to secure my wages.

145 Q. Did he ever do so?

A. No.

146 Q. Did he ever render to you any excuse or reason why he could not or would not execute said mortgage to you?

(Objected to by def'dent Smith.)

167 A. The objections that he made about doing that *it* threw him in my power and he had to make it to B. H. Smith, as he knew the hang of his business better than I did, and he then gave B. H. Smith general instructions as to his payments.

147 Q. On or about the month of August, 1876, before and after, was or was not Wm. H. Todd embarrassed and hard pressed for money?

(Objected to by def'd't Smith.)

A. In his writing he spoke to me that he was very much pressed for money.

148 Q. Did you or did you not, during the time that you were at Yellow Bayou, carry on a correspondence with Wm. H. Todd through the post office, and did you or did you not receive various letters from him?

(Objected to by def'd't Smith.)

A. Yes.

168 149 Q. In your answer to question number "one hundred and forty-six" you say that Todd stated he gave it to B. H. Smith, as he knew the hang of his business better than I did, and he then gave Benjamin H. Smith general instructions as to his payments. Is this answer as you desire it to stand? If yea, state how Todd gave B. H. Smith general instructions as to his payments.

(Objected to by def'd't Smith.)

A. I meant to say "and he made it in the name of B. H. Smith" for to secure him so he could give B. H. Smith general instructions.

150 Q. During the period that you were on Yellow Bayou who lived upon and had charge of the Bellevue plantation and the Bellevue Landing?

A. B. H. Smith, as far as I ever knew.

151 Q. Was he cultivating said plantation with cotton and corn?

(Objected to by def'd't Smith.)

169 A. I believe he was.

152 Q. Were you acquainted with B. H. Smith's reputation as a farmer and planter in the neighborhood?

(Objected to by def'd't Smith.)

A. No; I never knew him until I went down there.

153 Q. From your observation and your acquaintance with him when you got there did you regard him as a good farmer and manager of a plantation?

(Objected to by def'd't Smith.)

A. I can't answer that.

154 Q. Did he or did he not produce good crops upon the Belleview plantation?

(Objected to by def'd't Smith.)

A. I don't know what he made.

170 155 Q. Who owned, ran, and operated the Bellevue plantation during the period that you were in Arkansas?

(Objected to by def'd't Smith.)

A. All that I know is that Wm. H. Todd and B. H. Smith were owners and B. H. Smith farmed it.

156 Q. From whom did you get such information?

(Objected to by def'd't Smith.)

A. I heard Mr. Todd say so.

157 Q. State what Wm. H. Todd may have told you in relation to the business of the Bellevue plantation.

A. All that I can say about that is that I heard him say that they owned it together.

158 Q. Who furnished supplies to you on Yellow Bayou plantation while you were there in 1876 and 1877?

A. Wm. H. Todd.

171 Cross-examination of EDWIN MOLE by Mr. ROBINSON:

159 Q. Please state your occupation.

A. I am just doing general work.

160 Q. Please state when you went to Arkansas and how long you remained there.

A. I went to Arkansas February 14, 1876. I remained until the first Sunday in September, 1877.

161 Q. Did you ever superintend a cotton plantation or raise cotton before you went to Arkansas?

A. No.

162 Q. Why, then, did Mr. Todd employ you to superintend a cotton plantation?

(Objected to by def'd't Smith.)

A. I can give no reason.

172 163 Q. Did you represent to him that you could make cotton when he employed you?

(Objected to by pl't'ffs' counsel.)

A. No.

164 Q. Was not your business on the Yellow Bayou plantation working as a carpenter, building cabins, and taking care of mules?

(Objected to by pl't'ffs' counsel.)

A. I engaged myself to go down there to superintend the plantation, to make cotton, or whatever I could do, and superintend the place in general. Yes; that came in my line of business.

165 Q. Had you ever been on a cotton plantation or seen a cotton crop cultivated before you went to Arkansas?

A. No; I did not.

166 Q. When and where were you engaged by Mr. Wm. H. Todd to go upon the Yellow Bayou plantation.

173 A. I was engaged in Philadelphia just a day or two before the 14th day of February.

167 Q. Were you to do any work as carpenter on the Yellow Bayou plantation, or blacksmithing, and was such work specially provided for in your contract with Mr. Todd?

A. I don't remember that that was specified in the contract. I was to take Kirk's place.

168 Q. Did you do any carpenter's work or blacksmithing on the place?

A. Yes; I did some.

169 Q. What did Mr. Kirk do on that place?

A. All that I know, he worked at different jobs and looked after the plantation.

170 Q. Who was the Cornelius Bolles you referred to in your examination-in-chief?

A. Wm. H. Todd's son-in-law.

174 171 Q. You say — Mr. Todd *that* Mrs. Bolivar were on the plantation when you arrived there; where there any other members of the family there? If so, state.

A. Mrs. Bolivar's little girl was there.

172 Q. Can you state when the got there?

A. I have no idea when she got there.

173 Q. Did you know the Mr. Kirk you speak of, and did he leave Yellow Bayou after you arrived there?

A. I seen Mr. Kirk once before I went there. He left before I went there. I was not acquainted with him until I seen him.

174 Q. When Mr. Todd engaged you to take charge of Yellow Bayou plantation who was present, and did he not specially stipulate that you were to do the carpenter's work of the plantation, and blacksmithing, and look after the mules or work stock?

A. The one that was present was Mrs. Bolivar when I arrived, and then I was engaged in Philadelphia by his son-in-law
175 and daughter of Mr. Todd; they were Cornelius Bolles and wife; they engaged me for Mr. Todd; they were here and he was there, and he accepted of me when I got down there.

175 Q. Was the Mrs. Bolivar you speak of now your wife, and has she given her deposition in the case?

A. Yes.

176 Q. When you took charge of the plantation the morning after your arrival, what instructions did you receive from Wm. H. Todd, if any?

A. To go out and attend to my business; there was nothing particularly told me to do but put up the fence around the mule lot.

177 Q. Was that all you did, and all you were directed to do that day?

A. I don't know that he told me to do anything particular; I went on about my work. I don't know that he told me to
176 do that, but I went to do it.

178 Q. Did he ever give you general directions about the business of the plantation? And, if so, please state what they were.

A. He told me about how the crops were raised by hands, and a little instructions about how it was divided, and I believe he was with me the first time we were weighing up, and I think while he was there he would tell me a little about what he wanted done, and I would do it; we were pretty much together while he was there working about, and he would instruct me a little about what he wanted done and what he was going to do, and we would have it done. He gave me no other general directions, nor did he tell — to do anything in particular, but to do what I seen needed to be done *to do it.*

179 Q. When he left did he not direct you to be governed by Capt. Smith with instructions in regard to the cultivation of the crop, as it was a new business to you?

177 A. No; no further but he said he hoped we would get along together, and I tr*y*ed to do so, and we did get along first-rate for awhile; we had no trouble as neighbors together.

Adjourned until Saturday morning at 9 o'clock, June 2, 1883.

178 SATURDAY, *June 2nd*, 1883—9 o'clock.

Parties present: Mr. B. H. Smith, def'd't; J. F. Robinson, counsel for Smith, and Mr. H. H. Waddel, counsel for creditors of Todd.

Cross-examination of EDWIN MOLE continued by J. F. ROBINSON:

180 Q. Mr. Mole, you say in answer to the last question I asked that you had no instruction from Mr. Todd, "no further than he said

he hoped you would get along together, and we did get along first-rate for awhile." Did you have any trouble with Captain Smith?

A. I had no trouble with Capt. Smith.

181 Q. Was the contract that you made with Cornelius Bolles and wife to go to Arkansas verbal or written?

179 A. There was written articles. I had a copy and give it to Mr. Todd, and I have not had it since.

182 Q. When you reached the landing in Arkansas by what means did you get out to the plantation—by foot, on horseback, in a buggy, or by a boat?

A. By a boat from the levee.

183 Q. How far did you go in that boat and across what plantation or other property did you pass?

A. I started from the levee leading from Bellevue to Luna; I think it was four miles from Yellow Bayou to Luna, as near as I can tell; that is what the men call it down there. I believe I passed through some of Bellevue; the country was pretty much overflowed.

184 Q. Was the contract you speak of signed in Philadelphia?

A. Yes; it was signed here through the information from

180 a letter which they received to engage me and send me down.

185 Q. How much money did Cornelius Bolles give you with the ticket?

A. Nearest to my remembrance, in the neighborhood of fourteen dollars; the ticket took me to Memphis, as near as I can recollect.

186 Q. You say that Mr. Todd left on April 9th, 1876; how did he go to the landing when he took the steamboat?

A. To the best of my knowledge, he went in a boat to Luna.

187 Q. Was not Capt. B. H. Smith a general agent and superintendent of Mr. Todd for the Yellow Bayou plantation while you were there?

A. I never heard he was, only to ship the cotton or produce from Yellow Bayou, or after it was delivered to the landing, either by Mr. Todd's orders or from B. H. Smith for me to deliver it.

181 188 Q. Is that all he had to do with the plantation, its business, or you?

A. Yes; he had nothing more to do with me or that plantation.

189 Q. Were your instructions from Mr. Todd, in regard to the delivery of cotton upon the order of Capt. Smith, written or verbal?

A. I don't remember whether it was in the written articles or not; I don't know that it was in the written articles or not. I know that Mr. Todd told me to deliver cotton whenever ready by Mr. Smith's orders; also, from Mrs. Bolles, that he had the shipment of the cotton after delivered upon the landing, or where he may want it taken for shipping; that he had no further to do with my business on Yellow Bayou plantation in the management.

190 Q. Did Capt. Smith have the entire and exclusive control of the crops on the Yellow Bayou plantation?

182 A. He had the shipment and control of the cotton when Mr. Todd was not there. I believe Capt. Smith did have the en-

tire and exclusive control when Mr. Todd was not there, after it was made, baled, and ready for shipment and ready to go away — the gin-house.

190½ Q. If so, how did you come to turn over two bales of cotton to your wife, then Mrs. Bolivar?

A. The orders was, I believe, for her to have cotton to have some money to come North with; I know that the orders came from the family; I know that Mrs. Bolivar was over at Capt. Smith's house and was talking about coming home, which I understood her that her father owed her money; she had to take the cotton to get home with, which I suppose she was directed, by either one or the other. I don't remember that I had any instructions from Mr. Todd or Capt. Smith about the matter.

183 191 Q. By whose orders did you deliver the bale of cotton to Traywick?

A. I had orders from Mr. Todd.

192 Q. Do you know that of your own knowledge or do you testify from hearsay when you say that Mr. Kirk was the manager on Yellow Bayou during the cultivation and gathering of the crop of 1875?

A. I know that Mr. Kirk told me that himself, and also Mr. Todd, and two or three more of the family, and I did not see Mr. Kirk on the plantation during 1875 myself.

193 Q. Do you know what Mr. Kirk's contract was with Mr. Todd as to salary, services, &c.?

A. I don't know the salary he received; he was sole manager of Yellow Bayou—that is what he told me—with the exception of the sale of crops.

184 194 Q. Did he, Mr. Kirk, give you this information before you went to Yellow Bayou or since? Please state when and where he gave you the information.

A. Before I went South; a few days before I started; at the place called Mill Creek, Mr. Todd's property.

196 Q. Had there been any of the crop of 1875 shipped before you went to Yellow Bayou?

A. I was told there was; I can't tell the quantity.

197 Q. How did you deliver at Bellevue Landing the fourteen bales of cotton, marked "D. H. R.," on March 25th, referred to in your answer to interrogation eighty?

A. On wagon.

198 Q. How did you deliver the eighteen bales, marked "D. H. S.," at Luna on April 15th?

A. To the best of my knowledge, they were boated over. I don't remember exactly.

185 199 Q. Did you haul Mrs. Bolivar's cotton—two bales—to the river at Luna?

A. It must be boated. I did not deliver it; it must have been Williams, Adam White, or who it was I don't know.

200 Q. How and where did you deliver the five bales for J. F. Robinson, and upon whose order?

A. I don't remember.

201 Q. How and where did you deliver six bales marked "B. H. S." and upon whose order, on June 22nd?

A. I don't remember.

202 Q. Was any of the cotton seed referred to by you in your answer to the eighty-second interrogation damaged; and, if so, to what extent?

186 A. There was a great many bags destroyed, to the best of my knowledge; there was some chawed up, to the best of my remembrance; — words from Mr. Smith that the cotton seed — went from Smedley to Greenville was somewhat damaged and he complained about it.

203 Q. Was there not a large quantity of seed filled up at gin damaged, and the man who bought them refused to take them after they were filled up or sacked?

A. I don't know that there was any out at gin or whether he made a complaint to Mr. Smith.

204 Q. Was there not a large quantity of damaged seed emptied out of the sacks at the landing; and, if so, did the damage occur at the gin or on the plantation or at the landing, and from what cause—cattle, overflow, or any other cause? Please state fully.

187 A. I don't remember that any damaged seed was emptied at the landing. I don't remember, unless it was caused by dampness. I don't remember.

205 Q. What became of all the seed at the Yellow Bayou gin of the crop of 1875, some of which was sacked and some unsacked?

A. There was a great pile laid outside of the gin-house and some hauled out for manure; that was all damaged seed. All that I know is that some was in the seed-house which was made in 1875, from what I was told, and some was put in while I was there and some was put in that I had ginned from crop of 1875; some was hauled out to Bellevue in sacks; the balance was left, of which the cows eat a great deal. I don't know what became of the balance; there was a good deal of seed of crop of 1875, as they had been ginning before I had got there.

188 206 Q. Do you remember whether any of the seed of 1875 was thrown out of gin-house as damaged or used as manure?

A. I presume there was some went to waste; I can't say how much. The seed-house was pretty badly fixed when I got there, and some of it slipped out on the other old pile; when I got there the cows ate and tramped it, and some was hauled out for manure. How long the seed had been lying there I don't know from the old pile; I don't remember whether any of the seed was thrown out after I got there.

207 Q. Were there not a large number of sacks filled that were not hauled out, and what became of them?

A. No; I don't know if there was any emptied out of the sacks for certain. I made no memoranda of it, only what I hauled at the landing.

208 Q. Who ordered you to fill them up?

189 A. To the best of my remembrance, they, the purchasers, or it may be Capt. Smith, sent a man or two to sack up cot-

ton seed; while I was there I helped to sack up some. I don't remember whether any was emptied out of sacks at the gin-house while I was there.

209 Q. Did you ever dispose of any of the crops of Yellow Bayou?

A. Nothing more than I was ordered.

210 Q. Did you sell or trade any part of the crop to one William Jones? And, if so, state what and how much and upon whose order.

A. I sold him nothing, nor disposed of anything but what belonged to myself, to Wm. Jones.

211 Q. Did you ever sell or trade him any cotton or corn while you were on Yellow Bayou?

A. No.

212 Q. Did you ever sell or trade to any one else any cot-
190 ton, cotton seed, or corn while you were on Yellow Bayou plantation?

A. Not belonging to Mr. Todd, no; I have taken money for two bales belonging to Mrs. Cottonham, which was her own.

213 Q. Did Mrs. Cottonham make a crop of cotton on the Yellow Bayou plantation?

A. Yes.

214 Q. Who did your cooking on Yellow Bayou, and who paid for it, and how?

A. Mrs. Cottonham for some time; Edwin Mole did his own cooking for a time; Mr. Todd paid her; it was taken in cotton.

215 Q. Who delivered her the cotton, and how much, and when and where?

A. Some of her wages was paid in cotton. I don't remember how much. I believe Mr. Todd delivered some to her, and to the
191 best of my remembrace I received orders to give her some from Mr. Todd; it was taken on the dividing of the cotton; whatever I paid her for Mr. Todd, I can't tell how much or how many pounds it was; that is impossible to answer, unless you refer to the book; if I gave her any it was on dividing the cotton. I can't tell the time; it was turned over to her at gins.

216 Q. How long did Mrs. Cottonham cook at Yellow Bayou for you?

A. Most of the time I was there.

217 Q. Did you sell or trade to any one any other cotton while on Yellow Bayou, and what became of the remnants left in baleing?

A. Two or three remnants were put into one bale and all shipped off at the direction of Mr. Todd or Mr. Smith; none, excepting what Mr. Todd, his son, took. He took one four hundred and sixty pound, and one two hundred and forty pounds. I let him have the cotton; he said that Smith told him to take it. I had no
192 further instructions, only from what he said from Smith, to the best of my remembrance; I took his word for it.

218 Q. You say that Capt. Smith had nothing to do with Yellow Bayou business and crops only to control the cotton. Did you ever call upon Capt. Smith about getting feed for the place, bagging, and ties or anything else for the use of the plantation?

A. I have called upon him through Mr. Todd; he would direct B. H. Smith to get certain things for the plantation.

219 Q. How do you know that he, Mr. Todd, would direct Mr. Smith to get things for the plantation?

A. He would let him know through letter, or I can refer to a letter of Todd's directing me to ask B. H. Smith.

220 Q. File the letter referred to as part of your deposition.

A. I have not got the letter with me; I cannot get it in time to file with my deposition.

193 221 Q. Did you ever receive more than one letter directing you to call on Capt. Smith with reference to supplies for the plantation or other business connected therewith?

A. Yes.

222 Q. Were these letters received during the years 1876 and 1877 both?

A. Yes.

223 Q. Did you consult Capt. Smith or advise with him in regard to the cultivation or gathering of the crop?

A. No more than as a neighbor.

224 Q. Who furnish- you the money to pay the cotton pickers?

A. I received some from Capt. Smith. I can't say that that money was for the picking of cotton; it was paid out for labor on the place.

194 225 Q. Did Capt. Smith pay you any money on your wages as manager on Yellow Bayou?

A. No; what I received was paid on the place for labor.

226 Q. Did you, on the 16th day of August, 1876, receive fifty dollars in cash from Capt. Smith; and, if so, did you use it on the plantation or was it on account of your wages?

A. It was used on plantation. I don't remember that I received fifty dollars at one time. I find I did receive fifty dollars on that date.

227 Q. Did you receive twenty dollars from Capt. Smith on September 2nd, 1876; and, if so, did you use it for the benefit of the plantation, or for wages or how did you apply it?

A. I did. I used it on the plantation for whatever was necessary.

228 Q. Did you apply for and receive a lot of fifty sacks of oats from or through Capt. Smith in April, 1876?

195 A. To the best of my remembrance, there was some oats hauled from Luna to Yellow Bayou; whether the Capt. ordered them or Wm. H. Tood — how many bags or sacks I don't remember.

229 Q. Was not that lot of oats boated instead of hauled?

A. That might have been possible.

230 Q. Was not the country everflowed then?

A. I believe about that time it was overflowed.

231 Q. Did you not get twenty-five dollars from Capt. Smith on the 9th of November, 1876?

A. I received an order from B. H. Smith to Johnson for twenty-five dollars on October 19th, 1876.

232 Q. When you were in need of money for plantation purposes, bagging and ties, feed, &c., were you not in the habit, in the
196 absence of Mr. Todd, of calling on Capt. Smith for what you needed?

A. Yes.

Adjourned until 2.15 o'clock p. m.

2.15 O'CLOCK.

Parties present.

Cross-examination of Mr. MOLE continued by J. F. ROBINSON:

233 Q. When you had any trouble about the plantation business did you not, in the absence of Mr. Todd, always go to Capt. Smith for advice and assistance?

(Objected to by pl't'ffs' counsel.)

A. Yes; anything that occurred outside of the work I was directed to go to him by Mr. Todd.

234 Q. In your management of the plantation did you have occasion to make or haul rails to repair fencing; if so, did you have any trouble about rails when you were on Yellow Bayou?

A. Yes; I had to haul rails; yes; I had trouble.

197 235 Q. Who did you have trouble with and who did you go to for advice, assistance, and instructions?

A. I had a little trouble with Chapman; I think that was his name; I think I seen B. H. Smith about that.

236 Q. Were not a lot of the Yellow Bayou hands arrested in connection with the rail trouble, and did you not go to Capt. Smith to have the hands protected?

A. I don't remember but the one being arrested; to the best of my remembrance, it was Jim Webb. Yes; I went to Capt. Smith to have the hands protected.

237 Q. If you remember any other occasions on which you went to Capt. Smith for advice or assistance about the Yellow Bayou business please mention them.

A. I can't call to mind anything more.

198 238 Q. Who directed you to haul the rails you speak of?

A. Before Wm. H. Todd left the plantation he was a speaking about rails laying in the woods out toward Chapman's; the men were hunting up rails for fencing; supposed he was inside of the line; — whether he was or not; I believe it was never proved satisfactory; I might have said he, Todd, directed me — have them hauled; Mr. Todd directed me to haul the rails.

239 Q. Did you not go to Capt. Smith, two or three days before you hauled the rails, to know if you should haul them and where the Yellow Bayou line was?

A. I don't remember that I did before we was hauling.

240 Q. Were not Jackson Bowie, Toliver Bowie, and Leonard Tripp arrested in connection with the rails, and did not Capt. Smith have them defended upon your request?

A. I don't remember that they were arrested; yes, Capt. Smith had them defended at my request.

199 241 Q. You say, in your answer to the ninety-eighth interrogatory, that Mr. Todd, Jr., wanted to control, but orders was from his father that he "had nothing to do with the management and should have nothing to do with the controlling my affairs on the plantation." How, then, did it happen that you delivered to him or allowed him to take the cotton you spoke of off the plantation?

A. Because he said he was directed by Smith, and I took his word for it; that is all I know about it.

242 Q. Did you ever ask Capt. Smith if he had given any such orders?

A. Can't remember that I did or not.

243 Q. Did you divide any cotton with the hands on Yellow Bayou of the crop of 1875? If so, refer to your memoranda, and give name and quantity.

200 A. Yes; but I can't give you the full weights of the cotton without the book, nor yet the names of the squads. I mean the book that was kept down there to put the cotton weights in.

244 Q. How, then, does it happen that you can give the number and weight of each bale turned over to B. H. Smith and others?

A. Because I have only got it marked on my book—the bales that I shipped from the plantation, or of Mr. Todd's portion belonging to him.

245 Q. Is that all you have marked on the memorandum book you are referring to connected with the business of the place, and have you any objection to allowing defendant Smith to examine the memorandum book referred to?

A. Yes; I have got other memoranda in it. I have no objection to showing it.

(Witness hands book to defendant.)

201 246 Q. I see by your memoranda book that the cotton delivered to Bellevue on the 25th of March, 1876, was changed from ten to fourteen, and the lot of cotton delivered to Luna April 15th, 1876, was changed from fourteen to eighteen, and the date changed from April 25th, 1876, to April 15th, 1876. Please take out the leaf of the memorandum book and attach it to your answer to this interrogatory as Exhibit "A," and please explain how these alterations in number and date took place.

Objected to by pl't'ff-' counsel, who demands that the entire book be filed.

A. I prefer to file the entire book (book marked Exhibit "A," attached to this deposition), which I do. I don't remember how it became to be altered unless there was one load after I marked the first; I think there was, to the best of my knowledge.

247 Q. Were *there* these entries made in the memorandum book at the time the transactions took place or since?

202 A. These referred to in interrogatory number three hun-
hundred and forty-five, and which appear on pages which I now numbers one and two, were made about the time they took place. The other entries were copied from another book. You will find all these numbers and bales in the book that was kept for accounts of cotton on the Yellow Bayou plantation, on page- one and two. Bales on the second page I have not numbered on this book, as I think these were marked in the main book before my arrival and by Mr. Todd. That is all I can remember.

248 Q. Where is the main plantation book you have referred to?

A. I delivered it to Wm. H. Todd in Philadelphia.

249 Q. When and in the presence of whom did you deliver the main plantation book to Wm. H. Todd?

203 A. A day or two after I arrived. It was about the 11th or 12th of September, 1877. It was in the house on Marlborough street, in the presence of Mrs. Bolivar. No one eles was present.

250 Q. Please state what squad produced the eleven bales of cotton referred to in your answer to interrogatory number one hundred and two.

A. I can't tell without referring to the main cotton book.

251 Q. Can you give the names of the persons and squads who raised the different lots of cotton referred to by your answers to the various interrogations as having been delivered at Luna and Bellevue landings? If so, please state them.

A. I can give you some of the names out of this book, but the others I cannot without looking at the main book. I can only give those mentioned in the memorandum book marked Exhibit "A."

Adjourned until Monday, June 4th, at 9 o'clock a. m.

204 MONDAY MORNING, *June 4th*, 1883—9 o'clock a. m.

Cross-examination of Mr. MOLE continued by Mr. ROBINSON:

252 Q. Can you give any information in regard to the Yellow Bayou crops of cotton and cotton seeds for the years 1875 and 1876 beyond what you derived from the memorandum book marked Exhibit "A"—that is, as to quantity, to whom delivered, and by what squad or person raised, and the year? If so, please give it.

A. I cannot give any further information than that I have given out of the memorandum book.

253 Q. Is this memorandum book marked Exhibit "A" a correct copy from the main plantation book, or is it the original memorandum book kept at the time the transaction occur-ed?

205 A. This is a correct copy from the main plantation book, excepting as to pages one and two. I have not got the weights there. You will find every one of those bales on the plantation book.

254 Q. When you say, in answer to interrogatory No. "123," that the crop of cotton produced in 1876, which went to the share of Wm. H. Todd, was sixty-one bales, whence do you derive this information?

A. From memorandum book marked Exhibit "A."

255 Q. Do you derive from the same source your information as to Mr. Todd's share of the crop of 1875 which you say was fifty-one bales?

A. Yes.

256 Q. Was Yellow Bayou overflowed in whole or in part in 1875, 1876, or 1877? Please state fully the extent of the overflow for either year.

206 A. In 1875 I was not there to know. I will state as far as I know as to 1876; there was a flood out the time I went down there; it was in February. I believe it was somewhat going down, to the best of my remembrance, at that time; then there was another flood in April and during some of May. I can't state whether there was any more floods in 1876 or not; I know that was a large flood; that flood in May detained us from planting as early as we ought to. As to 1877, it was pretty well overflowed; a great deal of it was not overflowed as it was in 1876.

257 Q. Were the levees broken either year on the plantation?

A. Yes, there was breaks. I don't remember about 1877.

258 Q. Was not part of Yellow Bayou overflowed in July or August of 1876?

A. I can't remember what flood was in July or August, 1876.

207 259 Q. When that property was levied on that you speak of in answer to interrogatory No. 138, you say you were on Yellow Bayou. Please — when that attachment was levied—the month and year.

A. It was in 1876. I am not positive which month it was; it was some of the summer months.

260 Q. Did the sheriff or his deputy leave the property in your charge as special custodian?

A. I don't remember that there was any special custodian left; it was just left in my care as usual.

261 Q. Do you remember an attachment levied in the spring or summer of 1876, in case of Jurey & Gilles against Wm. H. Todd, on personal property of Wm. H. Todd on Yellow Bayou; and, if so, who was the custodian of that property?

(Objected to by pl't'ffs' counsel, Mr. Waddell.)

208 A. I don't remember anything about that.

262 Q. When did you first become acquainted with Wm. H. Todd?

A. The first time I ever seen Mr. Todd it was on the following Sunday after the 14th of February, 1876.

263 Q. Previous to that date, did you have any knowledge of his, Todd's, business?

(Objected to by Mr. Waddell.)

A. No.

264 Q. When did you first make the acquaintance of Benjamin H. Smith?

A. The first time I ever seen Benjamin H. Smith was the first Sunday after the 14th of February, 1876.

265 Q. Did you have any knowledge of D. H. Smith's business previous to that date?

A. I received the knowledge that he lived on Bellevue; he also had the shipments of the produce off Yellow Bayou.

209 266 Q. When, where, and from whom and in what manner did you derive that knowledge?

A. From Mr. & Mrs. Bolles, in Philadelphia, some time in February, 1876.

267 Q. Was all the knowledge you had of his business derived from Mr. & Mrs. Bolles?

A. His son Richard told me about the same time.

268 Q. Had you ever heard of Capt. Smith before you engaged to go South in February, 1876?

A. Not before that time?

269 Q. Did not the sheriff of Chicot county levy upon mules or other property on Yellow Bayou to satisfy an execution issued in the suit of one Richard Scott *vs.* Wm. H. Todd while you were on Yellow Bayou?

A. Don't remember that he did.

210 270 Q. Was there not a lot of cotton turned over to the sheriff of Chicot county and shipped to the account of D. H. Reynolds, the attorney of Scott, to satisfy that execution while you were on Yellow Bayou?

(Objected to by Mr. Waddell, counsel for pl't'ff-.)

A. I don't remember that there was any cotton shipped for any such debt.

271 Q. Was not all the cotton of the crop of 1875 of Yellow Bayou that was there in May, 1876, attached in the case of Jurey & Gilles *vs.* Wm. H. Todd in the Chicot circuit court?

(Objected to by pl't'ff-.)

A. To save my neck I can't call it to mind.

Q. Did not Mr. Todd tell you or write to you to give Capt. Smith reasonable notice before you left Yellow Bayou, so some one else could be employed?

211 A. I think he did write something, but I started North to see him, Mr. Todd, myself.

273 Q. Did you not say to Mr. Todd's heirs, or some of them, that Capt. Smith owned a judgment of about thirty-eight thousand dollars in favor of Wm. H. Todd against Joseph T. Woolfolk, in Chicot circuit court.

(Objected by pl't'ff-.)

A. I did not say any such thing, that B. H. Smith owned the judgment referred to.

274 Q. Did you not say to such heirs, or some of them, that he would get that thirty-eight thousand dollars and keep it?

A. No; I did not; I don't know that he ever got it.

275 Q. Were the orders given you by Capt. Smith for the delivery of cotton written or verbal?

212 A. Both.

276 Q. Have you any of the written orders? If so, please file them with your deposition.

A. I don't — that I have or not. I am not able just at this present time to file them. I may be able to find them.

277 Q. Where did you get feed for the mules and bagging and ties for the cotton?

A. Some I received from B. H. Smith; where the other came from I don't know, but I had a good bit from B. H. Smith.

278 Q. Was not Bellvue overflowed in 1876 & 1877?

A. Yes; it was pretty bad in 1876; 1877 was not so bad.

279 Q. How do you know that Mr. Todd gave Capt. Smith general instructions about his business?

213 A. Don't know any further than he said he gave his general instructions.

280 Q. Did you not want to strip the cotton from Yellow Bayou?

A. No; I never did.

281 Q. Were not the levees on Bellevue and Yellow Bayou badly broken in 1876 & 1877?

A. Yes.

282 Q. Did Mr. Todd leave Yellow Bayou before you planted the crop in 1876?

A. I believe he did.

283 Q. Was not the crop of 1876 injured by an early frost, and very short from overflows, late planting, and early frost?

A. Yes.

— Q. Did you tell any of the heirs-at-law of Wm. H. Todd that if the plaintiff- succeeded in this suit they, the "heirs," would

214 get a thousand dollars apiece and you would get your claim against Wm. A. Todd's estate? Please state fully what you said?

A. I would answer that no.

285 Q. Do you answer that no?

A. I did not state the amount that they would obtain.

286 Q. Did you tell them, or either of them, that they would get any sum?

A. I did not tell them they would get any certain sum.

287 Q. What did you tell them about the matter?

A. I merely told them they might get some, or something.

288 Q. What do you mean by some or something? Please explain fully.

A. They thought they ought to have something, and —

215 fully satisfied that they would be something for them if they had their rights.

289 Q. Their rights from whom?

A. Their father's estate.

290 Q. Where did you get your information that you give the heirs?

A. Out of some of their own mouths.

291 Q. Give the name of the heirs, and when and where you got this from their own mouths, and who was present.

A. I heard Derringer Todd and I heard Wm. H. Todd, Jr., talk about it, and I have heard Evelyn, my wife. I have, I might say, heard every one complaining and talking.

292 Q. Of whom were they talking and complaining?

A. Each other; expressing it among their own selves; they
216 were complaining about the estate; they did not seem as if they would get anything.

293 Q. What did you state to the heirs?

A. All I understood was there was enough to pay Wm. H. Todd's debts, and, if any, they would be entitled to the balance.

294 Q. Did you understand that that would be the result if the plaintiff in this suit succeeded?

A. Yes.

295 Q. From whom or whence was that information derived?

A. I think I have a letter, which I have not with me, stating how things were down South.

296 Q. From whom was that letter received, and state accurately what it said, if anything, about the heirs getting something, as to the result of the plaintiffs' success?

217 (Objected to by pl'ffs.)

A. I received a letter from D. H. Reynolds. I wrote to him in reference to my claim. I received a letter from him, but just what it states I can't say now, unless the letter is produced.

Adjourned until 2 o'clock p. m.

297 Q. Have you probated your claim against Wm. H. Todd's estate in Arkansas?

A. No; I have not sued it out or entered it up. I have not probated my claim in Arkansas.

298 Q. Where did Mr. Todd live in Philadelphia?

A. Corner of Gratz street & Montgomery Ave.

299 Q. Did he live anywhere else in Philadelphia since you have known him?

A. Not to my knowledge.

218 300 Q. Have you been active in getting witnesses and procuring testimony for the plaintiffs in this suit?

A. No.

301 Q. Have you gone to see or interview any one in regard to giving testimony in this case?

A. No.

302 Q. Have you seen Mr. Wm. Kirk recently and have you told him that he was wanted in this case to prove up his claim?

A. I seen him, and I did not ask him to prove up his claim in this case, and I did not tell him I wanted him to prove up his claim.

303 Q. Did you tell him that he was wanted, not that you wanted him to prove up his claim?

219 A. Yes; I told him he was wanted.

304 Q. What did you tell him he was wanted for?

(Objected to by pl't'ff-.)

A. How can I tell you that. Mr. Waddell sent me after him. I told him that Mr. Waddell wanted to see him.

305 Q. Was that all you told him?

A. Yes; that is all I put to him.

306 Q. Where did Wm. H. Todd die and where was his home?

A. In Philadelphia, corner of Montgomery and Gratz street; he lived there.

307 Q. When did Wm. Todd, Jr., go to Yellow Bayou and how long did he remain?

220 A. Some time in the fall of 1876; he was there when I left; I don't know when he left.

308 Q. Have you received or been promised any money, property, or other thing from the pl't'ffs in this suit or from any agent or attorney of theirs?

A. All that I have received or been promised is my witness fees; I have received seven dollars on account of witness fees and expenses from Mr. Waddell.

Re-examination of Mr. MOLE by Mr. WADDELL, counsel for pl't'ff-:

309 Q. In your cross-examination, question No. "164," you were asked, "Was not your business on Yellow Bayou plantation working as a carpenter, building cabins, and taking care of mules?" Examine the paper which I hand to you and state in whose
221 handwriting it is, and file it as part of your deposition.

(Question and filing of paper objected to by defendant Smith.)

A. The paper is in the handwriting of Wm. H. Todd (and I now file it as Exhibit "B" and as part of this deposition.)

310 Q. Was said paper marked Exhibit "B" delivered to you by Wm. H. Todd, deceased, after you had reported to him in Philadelphia and after you ceased to be the manager of Yellow Bayou plantation?

(Objected to by def'd't Smith.)

A. Yes, it was.

311 Q. In questions numbered "220" and "222" and your answers thereto the correspondence between you and Wm. H. Todd is referred to, which correspondence occurred while you were at Yellow Bayou in 1876 and 1877. (Examine the letters which
222 I hand you and state, first, are they in the handwriting of Wm. H. Todd, were they received by you through the post office, and are they the letters referred to in your cross-examination? If so, please file them (as Exhibits "C," "D," "E," "F," "G," "H," and "I") to this deposition.

(Question objected to, and the filing of the "exhibits" also objected to by the def'd't Smith.)

A. Yes; they are all in his handwriting; they were received by me through the mail. They are the letters referred to in my answers to the questions in the cross-examination.

313 Q. In your answer to question No. "254" you say "that you derived your information from memorandum book marked 'Exhibit A.'" Do you mean by this that you have no recollection of the transactions there referred to except what you get from the said memorandum book.

(Objected to by def'd't Smith.)

223 A. All I do remember — that those bales were shipped off the plantation independent of the book.

313 Q. In your cross-examination, question No. "255" is in the following words: "Do you derive from the same source your information as to Mr. Todd's share of the crops of 1875, which you say was fifty-one bales?" Your answer is "Yes." Do you mean by this to say that you have no recollection of the fifty-one bales of the crop of 1875, which you say you delivered to B. H. Smith, except as you get it from the memorandum book marked Exhibit "A"?

(Objected to by def'd't Smith.)

A. No.

314 Q. Do you remember, without reference to said memorandum book, that you delivered the cotton which fell to the share of Wm. H. Todd out of crop of 1875 to B. H. Smith, excepting the
224 few bales referred to, which you delivered to other parties.

(Objected to by def'd't Smith.)

A. I would remember if I had no memorandum book at all that it was shipped to Capt. B. H. Smith, on his order, with the exception of some few bales.

315 Q. In your answer to question No. "296" you state that "you received a letter from D. H. Reynolds." State what you did with that letter, and how it came to be out of your possession.

(Objected to by defendant Smith.)

A. I gave it to Mrs. Mole; Mrs. Smith wanted to see it; she handed it to her; Wm. H. Todd, Jr., snatched it out of her hands and said he would keep it; then I heard it was given to Major Robinson.

225 EDWIN MOLE.

Sworn and subscribed before me this fourth day of June, A. D. 1883.

[Seal James Crowe, Notary Public, Phila.]

JAMES CROWE,
Notary Public.

Adjourned until Tuesday morning, June 5th, at 9 o'clock.

226 *Deposition of Wm. Kirk, Jr.*

316 Ques. State your name, residence, occupation, and age.

Ans. Wm. Kirk, Jr.; I reside, No. 20 S. 18th St., Philadelphia; clerk at the general office of the Pennsylvania R. R. Company; I am about thirty-four years of age.

317 Q. Did you ever manage a Southern plantation; if yea, when, in what State, in what county, what was the name of the plantation, and by whom were you employed?

A. I did, in 1875, in the State of Ark., in Chicot county, on Yellow Bayou plantation; I was employed by Wm. H. Todd.

318 Q. Did you reside on or spend any time on said plantation before you took charge as manager; if yea, when, how long, and who was at that time manager?

A. I did reside on plantation before I took charge as manager about Nov., 1873, until about the first of June, 1874, *in.* Sunnias was manager of the plantation about that time.

319 Q. At what time did you take charge as manager, and at what time did you cease to be manager?

A. The early part of 1875—I cannot give the date—prior to the commencement of the crop of 1875. I ceased to be manager some time in Jan., 1876; I cannot fix the exact date.

320 Q. State what was your duties during your engagement as general manager, and to whom you looked for orders and directions.

A. I had entire charge of the corn lands and to do justice to my employer as manager of the place. After the commencement of the crop I looked to Wm. H. Todd, and to no other did I confer with in the management of the crop.

321 Q. Did B. H. Smith have or exercise any control over the Yellow Bayou plantation and its management during the year of 1875 while you were there?

A. After the crop of 1875 was started Mr. Smith did not give any orders in regard to making the crop, excepting that he objected to the planting at a certain date, not direct to me, but through some hands.

322 Q. State how and under what circumstances such objection came to your knowledge.

A. On my ordering the field cleared of cattle, preparatory to planting, some of the hands objected to planting on that date, as Capt. Smith said it was too early. Nevertheless, I had the planting commenced at the time I proposed to do.

323 Q. State, as near as you can remember, how many bales of cotton you produced on the Yellow Bayou plantation from the crop of 1875, which you had ginned out and caused to be hauled away before you left there.

A. As near as I can recollect, in the neighborhood of three hundred bales.

227 324 Q. About how many bales do you think were on the plantation and not ginned at the time you left, being part of the crop of 1875?

A. I should judge by the calculations of the seed-cotton in the

pens of the whole crop was between three and four hundred bales. There was about three hundred bales ginned and shipped when I left there; the balance remained in the pens subject to Mr. Todd's disposal.

325 Q. What did you do with the cotton that you had ginned and baled before you left Yellow Bayou plantation, being part of the crop of 1875?

A. Hauled it to Bellevue landing and probably some to Luna landing, subject to B. H. Smith's disposal.

326 Q. Did your duties with relation to the cotton and when you had delivered it, as stated in your former answer?

A. It did.

327 Q. Were you directed and required by Wm. H. Todd to deliver the cotton produced on Yellow Bayou plantation to Benjamin H. Smith; if yea, did you do so?

A. I was so required and did, whenever notified by Mr. Smith to, haul the cotton to the landing for shipment.

328 Q. Who owned and cultivated the plantation in Chicot county, Ark., during the year 1875, known as the Bellevue plantation?

A. I always understood that it was owned by B. H. Smith and Wm. H. Todd, and B. H. Smith seemed to have the general supervision of it, cultivating the same, &c.

329 Q. Who resided on the Bellevue plantation during the year 1875 and occupied the dwelling?

A. Mr. B. H. Smith.

330 Q. Did you understand from Wm. H. Todd and B. H. Smith or either of them that the Bellevue plantation was run and owned by them as partners?

A. I understood from Wm. H. Todd that they owned it between them; as to how they managed the running of the place I am unable to say.

331 Q. About how many bales of cotton did the Yellow Bayou plantation produce during the year 1874, while Mr. Simmons was the manager?

A. To the best of my knowledge I do not think the crop exceeded over one hundred bales of cotton.

Cross-examination of Mr. KIRK by Maj. J. F. ROBINSON:

332 X Q. How many crops did you raise while you had charge of Yellow Bayou plantation?

A. One crop; the crop of 1875.

228 333 X Q. When did you take charge as manager?

A. In the early part of 1875.

334 X Q. When did you cease?

A. In January, 1876.

335 X Q. What time did you arrive on the Yellow Bayou plantation?

A. In October, I think, 1874.

336 X Q. Did you go immediately on Yellow Bayou plantation?

A. I did not.

337 X Q. What did you do from October, 1874, until the early part of 1875?

A. I stopped at Capt. Smith's and went to and from his place to Yellow Bayou, under his directions, in endeavoring to make a settlement with the previous manager, Simmons.

338 X Q. At the time you were going to and fro from Yellow Bayou endeavoring to make the settlement with Simmons, in whose employ were you at that time?

A. Wm. H. Todd.

339 X Q. Why did you stop with Captain Smith, and why did you receive directions from him in regard to the settlement with Simmons—what had Smith to do with the Yellow Bayou business?

A. I was so directed by Mr. Todd to call at Capt. Smith's house on my arrival at Ark., and because Simmons had not vacated Yellow Bayou house I understood from Mr. Todd that Capt. Smith would endeavor to make a settlement with Simmons; my supposition was that he was to attend to that part of the business at the time.

340 X Q. What directions did Mr. Todd give you about stopping with Capt. Smith when you started to Arkansas?

A. He said something about Simmons going to be troublesome to remove from the plantation, and told me to call on Capt. Smith on my arrival and confer with him and act in conjunction with him in removing Simmons.

341 X Q. What instruction did he give you in regard to Simmons, and what did he say was the trouble?

A. I cannot answer that question exactly because I do not remember.

342 X Q. Give the names of the hands that you referred to in your answer to interrogatory No. "322" that objected to planting, together with the time and the place where the objections were made and the names of any others besides those making the objection who were there?

A. I do not remember the names of those who were there making the objections, or the time or place; I do not remember the names, but I know that objections were made at the blacksmith shop leading from the enclosed field.

229 343 X Q. Can you state the month in which the objection was made?

A. I think it was in March, just before planting time.

344 X Q. How do you arrive at the number of bales that you had hauled away of the crop of 1875 before you had left Yellow Bayou?

A. I kept an account book with all cotton ginned and the division made between the hands.

345 X Q. Is it from that account book that you say that three hundred bales had been hauled away before you left the crop of 1875?

A. From that book I could refer to when I was on the place and could tell as to how many bales had been ginned, and from that I jogged my memory.

346 X Q. Have you got that account book in your possession?

A. I have not.

347 X Q. When did you last see it?

A. On Yellow Bayou plantation, about January, 1876.

348 X Q. To whom did you deliver this three hundred bales of cotton that you caused to be hauled away before you left Yellow Bayou plantation, and when and where did you so deliver it?

Objected to by pl't'ffs.

A. I did not understand by the question No. "323" that Mr. Waddell asked as to whether I hauled all the cotton named to Bellevue or Luna; the number of bales was divided among the hands, as per agreement, and the portion due M. Todd was hauled as stated in No. "323."

349 X Q. Do you mean to say that three hundred bales were hauled out for Mr. Todd?

A. I do not.

350 X Q. How many bales were hauled out for Mr. Todd, and when and to whom delivered at that place?

A. I cannot remember the amount, as the division was made with hands as renters and contractors; the account book would tell.

351 X Q. How many renters and how many contract squads did you have, and how much cotton was raised by each?

A. I am unable to say.

352 X Q. About what quantity of cotton did you leave on the plantation undivided when you left?

A. It was supposed that there was about four hundred bales of seed-cotton prior to ginning the three hundred bales mentioned as divided when I left the balance undivided and in the gin-house?

230 353 X Q. When you say three hundred bales do you mean three hundred ties?

A. I mean three hundred ties.

354 X Q. What disposition did you make of the cotton seed produced from the crop of 1875?

A. I think the seed was thrown into the seed-house after the hands had taken a portion of it.

355 X Q. Did any of it waste?

A. There might have been a small portion run out through an opening at the back of the building.

356 X Q. Did you haul any cotton seed away from the plantation — you were there?

A. I did.

357 X Q. Please state the circumstances under which you hauled it, and by whose directions and whose it was.

A. I made arrangements with an agent of a cotton-seed oil Co. to purchase the seed delivered at Bellevue Landing. It was understood between Mr. Todd and myself that should any seed remain over after planting the crop of 1875 — was to sell the balance; it was Mr. Todd's seed.

358 X Q. How much did you receive for the seed; what disposition did you make of the proceeds?

A. I do remember the amount, but what I received I paid for some work did on the gins, and some I gave to Mr. Todd's daughter, Mrs. Jennie Harrigan, to take her home; if there was any balance it was used for the benefit of the place.

359 X Q. Did you make any entry on the plantation book of the amount of money received for the cotton seed and the disposition made of it?

A. I do not remember.

360 X Q. Did you ever account to Mr. Todd for the proceeds of the cotton seed, and if so, in what manner?

A. I believe I wrote him a letter giving him full particulars and positively I told him all about it, which he approved.

361 X Q Was not the cotton crop, including the seed, under the control of Capt. Smith by Mr. Todd's instructions?

A. No, sir; I think not.

362 X Q. To what extent did Mr. Todd's instructions to you go in giving Capt. Smith control of the cotton and cotton seed; were those instructions verbal or written?

A. They were all verbal; he had control of Mr. Todd's portion of the cotton after it was ginned; I don't think the seed question was ever mentioned in connection with Capt. Smith.

231 363 X Q. Did you or Mr. Todd or any one else use, control, or otherwise dispose of any cotton of the crop of 1875 or of any crop while you were on the place?

A. There was some cotton given to Isaac Cohen, of Luna, I think, by Mr. Todd's directions, which was charged on the plantation book against Mr. Isaac Cohen.

364 X Q. Did Mr. Todd control the cotton and direct the management of the plantation when present on the plantation? Was he on the plantation while you were there; and, if so, how long de he remain?

A. I received all orders from Mr. Todd when there. I think Mr. Todd was there the latter part of 1874; he remained a few weeks; he returned again in the latter part of 1875 or beginning of 1876; I left him there.

365 X Q. Did you haul off or dispose of any cotton or seed by Mr. Todd's directions while he was on the place? Please state how much, to whom, when, and where delivered.

A. I think there was cotton hauled to Bellevue Landing while he was there but no seed; the amount I do not remember. To the best of my knowledge it was put on the bank for Capt. Smith to ship; it was during Mr. Todd's stay on the plantation.

366 X Q. Was there not cotton delivered by Mr. Todd's orders to Isaac Cohen, L. C. Bryan & Co., or either, while you were on the plantation of Yellow Bayou?

A. I remember being authorized to mark cotton with a diamond "C;" to the other parties I have no recollection; yes, cotton was shipped to Cohen's acc't marked diamond "C."

367 X Q. Was there not cotton delivered to Gen. D. H. Reynolds, as attorney for some creditors of Mr. Todd, while you were there?

A. I do not know what disposition was made of the greater por-

tion of the cotton, as it was delivered to Bellevue subject to Mr. Todd's and Capt. Smith's disposal. I don't remember Gen. Reynolds receiving any cotton.

368 X Q. Do you know how much cotton you hauled to Bellevue Landing and Luna Landing—how much at each place?

A. I do not remember.

369 X Q. Do you know how many bales you hauled at Mr. Todd's directions and how many at Capt. Smith's?

A. I do not.

370 X Q. Did you deliver the cotton that Isaac Cohen got to him at Luna or was it hauled to Bellevue by any one's directions? Please state fully.

A. I think some was hauled to Bellevue and some to Luna. I can't tell how much went to either landing.

232 371 X Q. Did you boat any cotton to either landing while you were at Yellow Bayou?

A. There was a boat load of cotton taken away—I mean a flat boat taken away from the gin—during the overflow of 1874—I mean in the spring of 1874—but none in 1875, which I had no supervision over or anything to do with.

372 X Q. Was there an overflow in 1875, the year you were on the place; if so, when did it come up and when did it subside and was there more than one?

A. There was two overflows; the first overflow was — early part of the year 1875—I don't remember the date when it went back; the second overflow came up in *the* July or about the first of August and went back during August.

373 X Q. Do you know how long each rise stayed up and how much was Yellow Bayou plantation affected by each—I mean the land in cultivation?

A. The first overflow did not interfere with the planting the crop. I do not know how long it stayed up; the last stayed up about a month and did damage to a small portion of the crop along the ditches.

374 X Q. How long after you got — Arkansas (I mean the time you arrived at Mr. Smith's house in Ark.) did you act under Mr. Smith's instructions?

A. Up to some time prior to the commencement of the crop of 1875.

375 X Q. Did you have complete control of Yellow Bayou property and the management and control of the business, except as to the shipment of the cotton?

A. I had complete control of the hands, stock, and implements with which to make the crop of 1875. I would say that Capt. Smith had charge of financial affairs.

376 X Q. Did he have exclusive control of financial affairs of that plantation? Please state the full extent of Capt. Smith's superintendence and control of Yellow Bayou plantation, financially or otherwise.

A. He did not have exclusive — financial or matters pertaining

to the making of the crop. I am unable to state the full extent of the financial management.

377 X Q. Did he have any other control excepting as to financial?

A. He did not.

378 X Q. How, then, did you come to act under his directions in the matter of removing Simmons from the plantation for several months?

A. Because I had not been placed in charge of Yellow Bayou during my stay with Capt. Smith.

233 379 X Q. To whom did Mr. Todd direct you to go to be placed in possession of Yellow Bayou upon your arrival in Ark.?

A. Capt. Smith.

380 X Q. Who paid the taxes on the plantation?

A. I do not remember that.

381 X Q. Was there any litigation about Yellow Bayou when you were on it, and who attended to it?

A. I believe there was litigation. I believe it was attended to by both Mr. Todd and Capt. Smith.

(Objected to by plaintiffs.)

382 X Q. Was there any of the personal property of the plantation levied on; and, if so, who represented Mr. Todd in procuring its release?

(Objected to by pl't'fs.)

A. There was, and I think that Capt. Smith and Harris Cohen, of the firm of Isaac Cohen, had it released.

383 X Q. Do you not know that Capt. Smith had to go to New Orleans to borrow money to release the property?

A. I knew that Capt. Smith did go to New Orleans in regard to some business of Mr. Todd's; I do not remember the nature of the business.

384 X Q. Did you not go down to meet Capt. Smith on board the steamer "Bell Lell" at Leland plantation, and do you know what his business aboard the "Bell Lell" was?

A. I did meet Capt. Smith at Leland on board the steamer "Bell Lell," but do not know the particulars of his business. I gave him a letter from Mr. Todd; I have no idea what it was.

385 X Q. Did you not take a letter from Capt. Smith from the firm — Bryan, McMalkin & Co. notifying them not to credit Joshua Simmons, your predecessor, on account of the Yellow Bayou plantation?

A. I think I did.

386 X Q. Did you not take a letter from Capt. Smith to J. F. Robinson in regard to Yellow Bayou business?

A. I did.

387 X Q. Do you remember what the nature of the business was and when you took it to him?

A. I think it was in *the* reference to the removal of Simmons from the Yellow Bayou plantation.

388 X Q. Please state how often while you were on Yellow Bayou personal property there had been been levied on under legal process.

A. I do not remember.

389 X Q. Do you know who settled the matter when levies were made?

A. Capt. Smith, in the absence of Mr. Todd.

234 390 X Q. Do you know where the Yellow Bayou cotton was ginned from 1868 to 1876, inclusive, and who attended to it?

A. I know where the crop of 1874 and 1875 were ginned; it was ginned at Yellow Bayou gin-house. I don't know anything about the previous years; the ginning of the crop of 1875 up to January, 1876, I attended to.

391 X Q. Do you know who managed the Bellevue plantation from 1868 to 1876, inclusive?

A. I know that Capt. Smith managed the place from 1873, '74, and 1875, and was in charge in Jan., 1876, when I left. I have no knowledge further.

392 X Q. Whom did you leave on Yellow Bayou plantation; when you left to whom did you turn it over?

A. Mr. Todd.

393 X Q. Have you a probated claim against the estate of Mr. Todd?

A. I have.

394 X Q. Did not Mr. Simmons leave Yellow Bayou for several weeks at a time?

A. I was told he did. I know of my own knowledge that he did not give his personal attention to it all the time during two or three months.

395 X Q. Who looked after the business of the plantation during those two or three months?

A. Capt. Smith and myself.

396 X Q. Don't you know that Capt. Smith remonstrated with him about being absent?

A. I think I do.

397 X Q. Do you remember remonstrating with Mr. Simmons about one or more bales of cotton he had carried off the place?

A. I do not.

398 X Q. Do you remember Capt. Smith's remonstrating with Mr. Simmons about a horse he had taken off Yellow Bayou?

A. I do.

399 X Q. Did you have levying or ditching done on Yellow Bayou; and, if so, by whose directions and who did the work and who paid for it?

A. The only levying done on Yellow Bayou was doing the summer overflow; the hands did the work by my directions, with the promise that they should be paid in cotton at the gin-house.

400 X Q. Who instructed you to do this levying?

A. I do not remember that any one gave me instructions.

401 X Q. How were the hands paid for the work, and who paid them for that work?

A. I did, up to the time of my leaving, as the cotton was divided; so many pounds was added to their portion at market price to pay them for their work.

402 X Q. Please give the names of the hands you had so employed.

235 A. Lewis Banks, Ned Smith, Cyrus Brown, Adam White, Jacob Newton, and a number of others not remembered.

403 X Q. Did not Capt. Smith suggest that that work be done?

A. I do remember that he did.

404 X Q. To what extent did you have control of the cotton, or did Capt. Smith have exclusive control of it?

A. I had full control of it until it was ginned, baled, and divided.

405 X Q. After it was divided did you have any further control?

A. Yes; I had charge of the delivery of the cotton at the landing, after which it was under his control.

406 X Q. Did you have any right to sell any cotton in the seed, lint, or bale to any one, or were you authorized to pay any of Mr. Todd's debts with cotton, or were you authorized to make contracts for Mr. Todd payable in cotton?

A. I was authorized to sell. I was authorized to pay some of Mr. Todd's — in cotton in the seed. I think I received a letter from Mr. Todd during the summer overflow to that effect.

407 X Q. What was the limit of your authority to pay Mr. Todd's — with cotton?

A. I do not remember that.

408 X Q. Who shipped the cotton, looked after Mr. Todd's lawsuits, paid his taxes, and attended to all his other business in his absence other than taking care of the property on Yellow Bayou?

A. Capt. Smith, to the best of my knowledge.

409 X Q. Was not Mr. Todd in feeble health for a long time and after you went to Yellow Bayou?

A. He was.

410 X Q. Do you not know that Mr. Todd's health was such that he could not live in Chicot county and he did not consider it safe to remain there any length of time?

A. I do.

411 X Q. When Mr. Todd was sick in Philadelphia in 1874 did you not write one or more letters for him to Capt. Smith, giving him instructions what to have done in Yellow Bayou?

A. I did.

412 X Q. Are you a creditor of Mr. Todd's estate, and was he indebted to you at the time of his death?

A. Yes; I am one of his creditors, and he was indebted to me at the time of his death.

236 413 X Q. Did you not have some misunderstanding with Capt. Smith while managing Yellow Bayou; and, if so, was it not caused by your refusal to follow his instructions in regard to the planting some of the crop and other matters pertaining to the management of the farm?

A. I had a misunderstanding with Capt. Smith in reference to the management of Yellow Bayou.

414 X Q. Did you follow Capt. Smith's instructions from the time you went to Ark. in 1874 until planting time in 1875?

A. I followed his instructions until the arrival of Mr. Todd, which wrs about December, 1874.

415 X Q. While you were on Yellow Bayou what was Mr. Simmons' business; was it to manage the plantation, repairing the gin-house, or doing either or neither?

A. Before I took charge Mr. Simmons was on the place to put the gin in order and was under the directions of Mr. Todd to do as he (Mr. Todd) saw fit.

416 X Q. Do you refer to the spring of 1873 or the fall of 1874 and the spring of 1875?

A. I refer to the fall of 1873.

417 X Q. Please answer No. "415" with reference to 1874 and 1875.

A. I think he had been instructed to do some repairing to the gin; he seemed to take very little interest in the management of the plantation.

418 X Q. Who did you leave on Yellow Bayou after you made the crop of 1875?

A. I left Mr. Todd.

419 X Q. What time did you commence to plant the crop of 1875?

A. I think about the first of March, to the best of my recollection—that is, including corn; I planted corn first.

420 X Q. Was not the crop of 1874 ginned after you went on Yellow Bayou?

A. It was.

420 X Q. What was done with the crop of 1874?

A. I do not remember.

422 X Q. To whom did you deliver it and at what landing?

A. I think some of it was hauled to Bellevue Landing for Capt. Smith to ship according to Mr. Todd's directions.

423 X Q. Did you not object to Capt. Smith shipping the cotton and say that you thought that you ought to ship it?

A. don't remember that I did.

237 424 X Q. Did you deliver all the cotton crop of 1875 by orders of B. H. Smith, or did you haul it out by Mr. Todd's orders?

A. I did not. I hauled it out, some upon the order of one, and some upon the order of the other.

425 X Q. To whom was the cotton shipped to New Orleans, and for whose account?

A. I am not positive as to who it was shipped, but think there was some to the order of Halliday Bros.

426 X Q. Did not Mr. Todd send for Capt. Smith to come over to Yellow Bayou and to regulate the gin while Mr. Simmons was there in 1873?

A. I think he did.

427 X Q. Did you haul out all of the three hundred bales that you ginned of the crop of 1875?

A. I hauled out all of Mr. Todd's portion before I left.

428 X Q. Was Mr. Simmons a ginwright?

A. He told me he was.

429 X Q. What was the mark put on Mr. Todd's share or portion of 1875 and 1874, each?

A. All the cotton I marked was marked "W. H. T," sometimes plain and sometimes underlined and sometimes blocked.

430 X Q. Do you know whether Capt. Smith followed and got possession of cotton that Mr. Simmons took from Yellow Bayou and sold or traded to some one?

A. I do.

431 X Q. Was any cotton marked "D. H. R.," of the crops of 1874 and 1875, and shipped for account to Gen. H. D. Reynolds, attorney for some creditors of Mr. Todd?

A. I do not remember marking any cotton "D. H. R." I know he was collecting for creditors. I do not remember that he got any cotton.

432 X Q. Was there not a large amount of cotton of those crops marked diamond "C" and shipped over or turned over to Isaac Cohen for advance to hands?

A. There was.

X Q. Had there been any trouble between Capt. Smith and Mr. Simmons in regard to Yellow Bayou business?

A. There had.

433 X Q. Do you know who Mr. Todd's commission merchants were in New Orleans during 1873, '74, '75?

A. It was either Bussey & Co., Richardson & May, or T. H. & J. M. Allen.

238 Redirect examination of Mr. KIRK by Mr. WADDELL:

444 Q. In your cross-examination you state that it was Mr. Todd's share of the crop of 1875 which you estimated at three hundred bales, meaning as you have explained Todd's share of the three hundred bales which were delivered to B. H. Smith. Please state about the number of bales that Todd's share amounted to.

A. I do not remember the number of bales of Mr. Todd's portion.

445 Q. Do you remember about the number of bales?

A. I do not.

446 Q. In your cross-examination you stated that the crop was made by renters and contract hands; explain the difference between renters and contract hands.

A. Renters furnish their own stock implements and receive three-fourths of the total No. of pounds they made, Todd receiving the other fourth. Contract hands was furnished with the stock and implements and received one-half of what they made.

447 Q. Was there any other cotton collected or belonging to Mr. Todd other than the shares designated in your foregoing answer, being collections in cotton for advance or rations furnished them?

A. There was some, I do not know how much.

448 Q. Were the cotton bales marked diamond "C" hauled out and delivered to B. H. Smith at the landings?

A. I think there was some hauled to Bellevue Landing, but do not know that Capt. Smith shipped them; some was hauled to Cohen's store or Luna Landing and delivered direct to Cohen.

449 Q. During the cultivation and gathering of the crop of 1875 did Capt. Smith visit you or the Yellow Bayou plantation or exercise any direction over you?

A. He did not visit me, but was on the place a few times to my knowledge; he did not hold any conversation with me in reference to the management of the place.

239 Recross-examination of Mr. KIRK by Mr. ROBINSON:

450 X Q. From what source was this cotton derived that you speak of in answer to question "447."

A. It was for supplies furnished the contract hands.

455 X Q. Were not all the hands supplied by merchants at Luna and Columbia?

A. In the latter part of 1874 and the early part of 1875 a number of hands received supplies from Mr. Todd's store-rooms, for which — was to be paid out of their portion of the crop of 1875.

456 X Q. Please give the names of those hands, and were their accounts with Mr. Todd not assumed by I. Cohen or other merchants who supplied them the balance of the season of 1875?

A. James Perkins, Hart Mitchell, Jim Givens, Bot and George Ellis; that is as far as I can go. It was in one instance a German family leaving the place; their debt was assumed by I. Cohen.

457 X Q. How long did you supply those hands and where was the account book kept?

A. I would say about three months, and was supplied after by Isaac Cohen, Bryan McMackin & Co.; the accounts were kept in the plantation book.

451 X Q. Did Bryan McMackin & Co. and I Cohen get the interest or share of those hands in the crop and pay their bills?

A. I don't remember settling that way.

452 X Q. How did you settle?

A. Settled by taking cotton at market price at the gin-house when the division was made.

453 X Q. Did not all the hands make mortgages to the merchants before they would supply them, and did not merchants control the part of the crop belonging to the hands in full to the extent of their indebtedness to the merchants?

A. They did, and they did control their portion of the crop to pay their indebtedness.

454 X Q. Was not the supplies furnished Perkins and others paid for to some extent by them in work done on the plantation?

A. It was.

453 X Q. Did all the hands pay out that year in full or were they behind?

A. There was some behind.

454 X Q. Were any of the hands that you speak of that got supplies from you behind with you or their merchants?

A. No; there was none behind with me—I mean the place—but some were behind with the merchants.

WM. KIRK, JR.

Affirmed and subscribed before me this 6th day of June, A. D. 1886.

[SEAL.] JAMES CROWE,
Notary Public.

240 *Deposition of Derringer Todd.*

DERRINGER TODD, being produced, affirmed on part of defendant, deposeth as follows:

1 Q. Give your name, age, and place of residence.

A. Derringer Todd; aged, twenty-nine years; I reside at No. 1111 Division street, Philadelphia.

2 Q. Were you related or of kin of Wm. H. Todd, deceased?

A. I am his son.

3 Q. Are you acquainted with Benjamin H. Smith?

A. I am.

4 Q. Are you related to him, and how?

A. He is my brother-in-law.

5 Q. Did your father, Wm. H. Todd, own any property in Arkansas?

A. He did.

4 Q. Where was it situated in Arkansas, and what did it consist of?

A. One plantation, called Yellow Bayou, and one-half interest in a plantation with B. H. Smith, called Bellevue.

5 Q. When did Capt. Smith go to Arkansas—about what year?

A. To the best of my recollection, about the year 1867.

6 Q. Who managed the Bellevue plantation?

241 A. Capt. Smith managed his own half and Todd's half in Bellevue plantation, and managed Yellow Bayou plantation for Todd also.

6½ Q. How long has Capt. Smith managed the whole of Bellevue plantation?

A. All the time he lived there; the whole time he was in the country, according to Wm. H. Todd's statements.

7 Q. Who superintended or managed Yellow Bayou?

A. Capt. Smith. (J. C., N. P.)

8 Q. Does the estate of Wm. H. Todd own that plantation now?

A. It does not belong to the estate of Wm. H. Todd now.

9 Q. How long did Capt. Smith manage or superintend that plantation?

A. Somewhere in the reach of fourteen years, to my best recollection.

10 Q. When did Capt. Smith commence to manage Yellow Bayou?

A. Somewhere in the years of 1868 or 1869, or thereabouts, and continued to manage it as long as my father owned it.

11 Q. Do you know whether there was any contract or agreement

between your father and Capt. Smith by which Smith was to be paid for his services in superintending this plantation?

242 A. I don't know as there was any written contract, and Wm. H. Todd expressed himself on several occasions and said he owed Capt. Smith for services, and without him he could not get along in the southern country because he had to be absent so much, and that he had not the dependance in a man in that country that he had in Capt. Smith, and that Capt. Smith was the only man in that country that would raise funds and keep the sheriff off of him, and that no stranger would take that *would take that* interest in him or his affairs, so he said to me.

12 Q. Did Capt. Smith attend to your father's affairs generally in the South?

A. He did.

14 Q. Where was your father's home?

A. Here in Philadelphia.

15 Q. Were you ever in the South?

A. Yes, sir; in the year 1871.

16 Q. Who was on the Yellow Bayou plantation then, and did Capt. Smith act as superintendant?

A. Wm. H. Todd was on Yellow Bayou plantation then; Capt. Smith at that time superintended Yellow Bayou and the weighing, ginning, and marking of the Yellow Bayou crops.

243 17 Q. Did you hear your father say that he did not owe Capt. Smith anything for managing Bellevue and Yellow Bayou plantations?

A. I never did; on the other hand, I heard him say he owed for services on both places; for example, by date of two letters dated October 12th, 1874, and October 15th, 1874, wherein he gave Capt. Smith instructions to oversee Yellow Bayou and his half interest in Bellevue.

Cross-examination by Mr. WADDELL, on behalf of the plaintiffs:

1 X Q. In your answer to the "sixth" interrogatory "you say Capt. Smith managed his one-half and Todd's half on Bellevue plantation." Were Wm. H. Todd and Benjamin H. Smith equal partners in Bellevue plantation, and did they run it as partners?

A. So Wm. H. Todd said often.

2 X Q. In your answer to question "six and a half" you state that Benjamin H. Smith managed the Bellevue plantation all the time he lived there, according to Wm. H. Todd's statement. Where did you learn this from Wm. H. Todd?

A. On the summer prior to his death he had a chronic disease of the bladder at the time, was failing in health rapidly,

244 and I went to learn the statement of his affairs in the South and told him that his time was very short and to tell me how his things were down there, and he said "that Capt. Smith had full control of his affairs, and that he owed him large claims for services, but that he thought his claim was a little too much." That was the substance of what he said.

3 X Q. Can you give the exact words he used on that occasion. (J. C., N. P.)

A. I can't give it *verbatum;* the substance is as above.

4 X Q. Can you give three consecutive words that he used on that occasion?

A. "I owe Capt. Smith for service and I feel mortified that I can't pay him."

5 X Q. Do you give the foregoing as exact words used by Wm. H. Todd on that occasion?

A. I do.

6 X Q. In your answer to question "nine" "you state that Capt. Smith managed the Yellow Bayou plantation somewhere in the reach of fourteen years, to the best of my recollection." Do you state this of your own knowledge or upon information derived from others?

245 A. I state this from information derived from Wm. H. Todd.

7 X Q. At what time did you derive that information and where?

A. In the summer prior to his death, at his house in the city of Philadelphia.

8 X Q. State the circumstances which attended the interview at which you derived this information from your father, giving the time, place, and who else was present.

A. The exact time can't be given, although it was in the summer, at his house in Philadelphia; no one else was present.

10 X Q. Was Wm. H. Todd in bed at the time?

A. No, sir.

11 X Q. Was he sitting or standing?

A. He was sitting on his side door-step, before 12 o'clock in the morning, reading the "Public Ledger" and feeling very poorly and much embarrassed in his mind about his affairs in the South.

12 X Q. In your answer to question "eleven" you say "that Wm. H. Todd expressed himself that he owed Capt. Smith for services, &c." Was it at this interview on the side door-steps that he told you this?

A. Yes; on the side door-step and in the house also, and at other times.

246 13 X Q. Can you give the exact words that Wm. H. Todd used on this occasion with reference to the indebtedness from him to Capt. Smith for services?

A. I gave it once and that is sufficient; I didn't recollect them.

14 X Q. Was it on that occasion that Wm. H. Todd told you that Capt. Smith was the only man in that country that would raise funds and keep the sheriff off of him?

A. It was; and he said he worked hard to save his property down there.

15 X Q. In your answer to question "twelve" you say that Capt. Smith attended to your father's affairs generally in the South?

A. I decidedly say so; I know it from letters written down to him from father, and from statements that he said if Capt. Smith was

not there he would have lost his property long before he did; such was the faith he had in Smith.

16 X Q. You say you were in the South in 1871; whereabouts in the South were you?

A. On Yellow Bayou plantation, living with my father.

17 X Q. Can you read and write? If yea, take the pen
247 and answer this question in your own handwriting and sign your name to it.

A. I can read and write; Deringer Todd.

18 X Q. I hand to the notary a letter dated November 21st, 1882, signed Derringer Todd and Wm. H. Todd, and mark it Exhibit "X" and attach it to this deposition. Examine it and say whether or not it is in your handwriting.

A. That is my handwriting and that is my letter.

19 X Q. Is the name Wm. H. Todd which is signed to said letter in the handwriting of your brother, Wm. H. Todd?

A. Yes; he put it there.

20 X Q. I now hand to the notary a letter dated November 23rd, 1882, signed with your signature, which is marked "Exhibit Y," and attach it to this deposition. Examine the letter and state whether or not it is in your handwriting.

A. Yes; it is in my handwriting.

21 X Q. Did you believe in a hell before it was taken out of the Bible?

A. Since I read the Bible I knew there was a hell.

Re-examination of DERRINGER TODD by Mr. J. F. ROBINSON:

248 1 Q. Will you please state the circumstances under which you first wrote that letter marked "Exhibit X?"

A. My brother, Wm. H. Todd, came to my house one evening and said that Mr. Reynolds was corresponding with Mr. Mole about the creditors down there. I can't exactly remember the conversation; we wanted to know what conversation Reynolds would have in reference to the — of the letter coming up to Mole; D. wrote down there — the letter, and I rewrote and recalled what I had written for fear I might have asserted something that was not so, although I made no assertion intentionally to harm any one. I don't know how the affairs stood in — South after my father died.

DERINGER TODD.

Affirmed and subscribed before me this 6th day of June, A. D. 1883.

[SEAL.] JAMES CROWE,
Notary Public.

249 *Deposition of Mrs. Jennie W. Bowles.*

1 Q. Give your name, age, and place of residence.

A. I reside at Sellerville, Buck's county, State of Pennsylvania; I am thirty-one years of age, and my name is Jennie W. Bowles.

2 Q. Are you related or of kin to Wm. H. Todd, deceased?

A. I am his daughter.

3 Q. Are you acquainted with Benjamin H. Smith?
A. I am.
4 Q. Are you related to him in any way; and, if so, how?
A. I am his sister-in-law.
5 Q. Did your father, Wm. H. Todd, have any property in the State of Arkansas?
A. He did.
250 6 Q. Where was it situated and what did it consist of?
A. Situated in Chicot county, Arkansas; it consisted of two plantations, called Bellevue and Yellow Bayou plantation.
7 Q. Was there any one interested with him in Bellevue; and, if so, who was it and what was the extent of his interest?
A. Capt. Benjamin H. Smith owned one-half.
8 Q. About what year did Capt. Smith go to Arkansas?
A. About 1868; the time I don't remember.
9 Q. Who managed the Bellevue plantation from the time that Capt. Smith went to Arkansas to this time?
A. Capt. Benjamin H. Smith was the sole manager.
10 Q. State when or about the time your father, Wm. H. Todd, died.
251 A. May 13, 1879.
11 Q. Did your father own Yellow Bayou plantation at the time of his death; and, if not, who did own it?
A. Mr. Holliday owned it at the time of his death.
12 Q. Who managed and superintended Yellow Bayou plantation while your father owned it—I mean from 1868 on?
A. There was several parties on it, but Capt. Smith was the main manager and general superintendant over them all.
13 Q. You say Capt. Smith went to Bellevue plantation, in Arkansas, on or about the year 1868. Has he remained there continuously ever since?
A. He did.
14 Q. Do you know whether there was any agreement or contract between your father and Capt. Smith by which Capt. Smith was to be compensated for his services in superintending and man-
252 aging the Yellow Bayou and Bellevue plantations.
A. I don't remember whether there ever was a written agreement, but he justly owes him what he claims, as far as I know. I mean there was no written contract that I saw; there was a verbal one.

NOTE—The words "I mean there was no written contract that I saw; there was a verbal one" was a correction made by the witness upon reading the deposition over to her, and before she signed it, and after two adjournments. (J. C., N. P.)

15 Q. Did you ever hear — father say anything about Capt. Smith's services on these plantations or anything with reference to his compensation for services?
A. He did; he said he owed him for superintending and managing his half on both plantations; I mean his half of Bellevue and all of Yellow Bayou.

16 Q. Did Capt. Smith own any interest in Yellow Bayou plantation?

A. Not that I know of.

17 Q. Where was your father's residence or home?

A. In the city of Philadelphia.

18 Q. Who attended to your father's interest or business
253 generally in the South during your father's absence?

A. Capt. Benjamin H. Smith.

19 Q. Were you ever on either Yellow Bayou or Bellevue plantations?

A. I was.

20 Q. Please state the year.

A. In 1869.

21 Q. Who managed and superintended those plantations when you were there?

A. Capt. Smith did in 1869.

22 Q. Did you ever hear your father say "that he did not owe Capt. Smith anything for services on those plantations?"

A. I did not; not that I can remember.

23 Q. Do you remember when Mr. Edwin Mole went South to take charge of the Yellow Bayou plantation business; and, if so, who made the contract with him, if you remember?

254 A. My husband, Mr. Bowles.

24 Q. Were you present when it was made, and was it in writing or not?

A. I do not remember whether I was present or not; it runs in my mind I was present, as far as I remember. I think it was not in writing, as far as I recollect.

Cross-examination of Mrs. BOWLES by Mr. WADDEL, for plaintiff-:

1 X Q. Are you sure you are thirty-one years of age?

A. I am.

2 X Q. How long have you been married?

A. Since Thanksgiving, 1875.

3 X Q. How long have you been acquainted with Benjamin H Smith?

A. Nineteen years this August, as near as I can remember.

255 4 X Q. Where did you first become acquainted with him, and where?

A. In my father's residence, No. 1809 Montgomery avenue.

5 X Q. Was he at that time your brother-in-law?

A. He was.

6 X Q. How long had he been your brother-in-law at that time?

A. He was a few months only; as far as I remember, it was five or six months after he was married.

7 Q. Was Capt. Smith a visitor at your father's house before he and your sister were married?

A. He was.

8 X Q. Was he married at your father's house?

A. He was not.

9 X Q. Where was he married?

256 A. At Trenton or New Brunswick, in New Jersey, as far as I can remember.

10 X Q. State why it was that you never saw Mr. Smith until six months after his marriage to your sister.

A. All the reason I can say, ma considered us children and never allowed us in the parlor.

11 X Q. Did Capt. Smith and your sister, his wife, visit your father's house after their marriage; if yea, how soon after?

A. I can't remember how soon, but after they returned from travelling, as far as I can remember.

12 X Q. Where did they go travelling?

A. As far as I can remember they went to New York and Niagara Falls.

13 X Q. Did your father own any property in Chicot county, Arkansas, not mentioned in your answer to question No. "six?"

257 A. Well, I think that he often spoke of the Walker place. I don't know whether he owned it himself or not.

14 X Q. Did you have the same opportunity to know whether or not he owned the Walker place that you had to know that he owned the Yellow Bayou and Bellevue places?

A. I did.

15 X Q. Then why is it that you do not know whether he owned the Walker place or not?

A. Because he never took as much interest in that as he did in the other and because it was always under water when there was an overflow, so I heard him say.

16 X Q. When you state that your father owned Yellow Bayou and Bellevue plantations, do you make the statement from your own actual knowledge or from hearsay?

A. From what I have seen and know and have heard.

258 17 X Q. State, first, what you have seen.

A. I have seen a good many things, papers of father's and receipts and such things as that.

18 X Q. What things or papers and what receipts of your father's have you seen from which you formed your knowledge of the ownership of said property?

A. I have seen bills of lading and the map of Yellow Bayou and other papers that I do not remember.

19 X Q. What did the bills of lading say?

A. That I can't remember.

20 X Q. Then how do the bills of lading aid you in knowing that Yellow Bayou and Bellevue belonged to your father?

A. For supplies that were shipped to the place.

21 X Q. Did the bill of lading for supplies shipped to the place tell you that Yellow Bayou and Bellevue belonged to Wm. H. Todd?

259 A. Well, I suppose they did or they would not have been shipped in his name while my father was down there.

22 X Q. What marks, writings, or other information did the map

referred to contain which informed you that Yellow Bayou and Bellevue plantations belonged to your father?

A. Well, pa only showed us the map to let us know how pretty Yellow Bayou lay.

23 X Q. Then the map of Yellow Bayou did not show you who owned it, but only how pretty it lay; is this correct?

A. Yes, sir.

24 X Q. Then you did not learn from the map that your father owned Yellow Bayou; is this correct?

A. Well, I suppose he did, by hearing him say so.

25 X Q. You suppose what?

A. That he owned Yellow Bayou.

260 26 X Q. Do you know that he owned Yellow Bayou?

A. I only heard him say so.

27 X Q. When did you hear him say so?

A. Several times while he lived.

28 X Q. How many times and where, and name some of the places?

A. I don't remember.

29 X Q. Do you remember that he ever said so at all?

A. I do.

30 X Q. What were his words used on that occasion?

A. I remember him saying that he helped to clear the first cane off it and helped to build the first house, and that he loved every spot on the plantation, which was the fact. I can't state anything more in answer to this question. I think the loss of Yellow Bayou killed him.

261 31 X Q. Did your father tell you that the other fellow who helped him cut the cane and build the first house owned any interest in the place with him?

A. He did not.

32 X Q. Have you stated all the information you had as to the ownership of Bellevue and Yellow Bayou when you answered question "six?"

A. I have.

33 X Q. In your answer to question "seven" you state "that Capt. Benjamin H. Smith owned one-half of Bellevue;" how do you know this?

A. By my father saying so.

34 X Q. Did he say that he and Capt. Smith were equal partners in the ownership of Bellevue plantation?

A. He did. ("They were part owners in everything."

(NOTE.—The correction in parentheses inserted by request of witness upon reading deposition over to her before signing. E. N.) (J. C., N. P.)

35 X Q. Did he say they were partners in the crops and mules on said place?

262 A. I often heard him say that Capt. Smith and him were joint partners in everything on Bellevue.

36 X Q. Who lived on Bellevue?

A. Capt. Smith.

37 X Q. How long has he lived on Bellevue?

A. I think since 1869 or 1870; at my best recollection, the winter of 1870.

38 X Q. Was there a good residence on Bellevue plantation?

A. Pretty good for that country.

39 X Q. About how many rooms in it?

A. At the time I was there there was four upstairs and a small store-room, which makes five, two rooms downstairs, a kitchen, dining-room, and two store-rooms.

40 X Q. Was there a garden, lawn, and grass lots attached near the house?

263 A. There was a garden back and a large yard.

41 X Q. How was the garden and yard and house used and occupied by Capt. Smith and his family, or by Wm. H. Todd and his family?

A. It was used only by Capt. Smith's family.

42 X Q. In you answer to question "eight" you state that Capt. Smith went to Arkansas about the year 1868. How do you know this?

A. I heard my father say so.

43 X Q. When did you hear your father say so?

A. When ma received the telegram from Arkansas that they had arrived safe and the business that they went on had succeeded (as near as I can remember the year).

(NOTE.—The words in parentheses inserted at request of witness before signing her deposition.—J. C., N. P.)

44 X Q. Did you hear your father say this at that time?

A. No, I did not; he was in Arkansas. Previous to his leaving this city for Arkansas he said Capt. Smith was to be his partner (on Yellow Bayou; my father owned Bellevue at that time as far as I know).

(NOTE.—The words in parentheses inserted before signing.—J. C., N. P.)

264 45 X Q. Do you know that that was in 1868?

A. To the best of my knowledge I do.

46 X Q. Did you see Capt. Smith in Arkansas in 1868?

A. No, I did not.

47 X Q. When did you see him in Arkansas?

A. In 1869.

48 X. Q. In your answer to question "nine" you state that Capt. Benjamin H. Smith was the sole manager of Bellevue plantation from the time he went to Arkansas up to this time?

A. He was.

49 X Q. How do you know this?

A. Because there was no — else there but Capt. Smith.

50 X Q. How do you know there was no one else there but Capt. Smith?

265 A. I was there several times in company with my father, and visited my sister at Bellevue frequently, and saw no one there but Capt. Smith.

51 X Q. Was there no hired manager at Bellevue?

A. I believe not.

52 X Q. Do you know not?

A. Not while I was there. I know there was not a hired manager.

53 X Q. Was there no hired field boss?

A. I think not.

54 X Q. Did Capt. Smith spend most or all of his time in the field with the hands?

A. He did, as far as I know; superintending his own business.

55 X Q. How long were you down there in 1869, which you say was your first visit?

A. I was down from November, 1869, to May, 1870, to my best recollection, in company with my mother.

266 56 X Q. Did you visit your sister at Bellevue often while down there on that trip?

A. I did.

57 X Q. Did you see much of the farming operation going on at Bellevue at the time?

A. Only while I was riding by.

58 X Q. Did it look well?

A. I- did, as far as I can remember.

59 X Q. Did it seem to be well managed?

A. It was.

60 X Q. Did they make much cotton?

A. I do not know.

61 X Q. Did you see any large cotton field on Bellevue on that visit?

A. I did; they were picking cotton.

267 62 X Q. Did you observe whether Capt. Smith was managing in person the picking and weighing up of the cotton?

A. I saw him weighing cotton in the gin. Yes; he did the managing.

63 X Q. Did he have a large force of hands picking?

A. I never noticed.

64 X Q. You say you have seen him weighing cotton at the gin; was the gin near the house?

A. No, sir.

65 X Q. Did you go to the gin to see them weighing cotton?

A. I did; also to see them gin it.

66 X Q. Did you see them gin much cotton?

A. Not very much.

67 X Q. Did you go up into the gin-house to see them ginning?

A. I did.

268 68 X Q. Did you see much cotton in the gin-house?

A. At times more or less.

69 X Q. How much more and how much less?

A. I never took any account of it and cannot say.

70 X Q. Was it piled up in large or small quantities?
A. I never took notice.
71 X Q. Did you see any cotton bales on Yellow Bayou while on that trip?
A. I did.
72 X Q. Did you see many?
A. Some few.
73 X Q. Did your father express great confidence in Capt. Smith as a manager?
A. He did.
269 74 X Q. Was Capt. Smith a good cotton planter?
A. He was considered as such.
75 X Q. Who considered him as such?
A. My father.
76 X Q. Did he make good crops on Bellevue plantation?
A. I do not know.
77 X Q. Did you hear your father complain that he did not make good crops?
A. Not that I remember.
78 X Q. You state that Capt. Smith was sole manager; what do you mean by sole?
A. The only one I knew to be manager.
79 Q. Did your father take no part in the management of the partnership business on Bellevue?
A. No; he was a silent partner.
270 80 X Q. Were there many mules on Bellevue plantation belonging to your father and Capt. Smith?
A. There was mules, but how many I don't know.
81 X Q. Were there enough to carry on the business of the plantation?
A. I don't know.
82 X Q. When did you make your next visit to Arkanas?
A. To the best of my knowledge, in 1873 and 1874.
83 X Q. About what time did you go there and about what time did you return?
A. I went in the fall of 1873 and returned in the spring of 1874. (J. C., N. P.)
84 X Q. During your visit at that time did you visit your sister at Bellevue?
A. I did.
271 85 X Q. Was Capt. Smith at that time managing the business of Smith and Todd on Bellevue?
A. He was.
86 X Q. Was he the sole manager of that business?
A. As far as I know I think so; yes, I know it was so.
87 X Q. Up to that time had your father lost confidence in Capt. Smith and his management of Bellevue?
A. He had not; he had the utmost confidence in him.
88 X Q. Did he intrust everything to him?
A. He did.

89 X Q. Did he allow him, Smith, to ship the cotton produced on Bellevue? (J. C., N. P.)

A. He did.

90 X Q. Then, at that time, your father had full confidence in Capt. Smith?

272 A. He had.

Cross-examination by Mr. BOWLES continued:

91 X Q. At that time did you visit your sister at Bellevue often?

A. I did.

92 X Q. Did you see the cotton fields of Bellevue?

A. Yes; I saw the cotton fields, and the negroes were picking.

93 X Q. From the appearance of the cotton storks do you think that Capt. Smith had made a good or bad crop on Bellevue?

A. I never took notice of them.

94 X Q. Did you go to the gin-house on that trip to see them gin the cotton?

A. I don't remember.

95 X Q. Do you remember seeing any cotton on Bellevue place during that visit to Arkansas?

273 A. I saw cotton, but did not memorize what it was; whether it was in the field or in the bale.

96 X Q. Did you see any cotton bales produced there?

A. Yes; I have on that trip.

97 X Q. Who was managing and controlling the cotton on Belleview that year?

A. Capt. B. H. Smith.

98 X Q. Was your father there at the time?

A. I think he was.

99 X Q. Do you mean to say that he was on Bellevue?

A. No; he was on Yellow Bayou, where he made it his home while in Arkansas.

100 X Q. Was he making Yellow Bayou his home; if so, how long did he remain during 1873 and 1874?

274 A. He arrived there in the fall and returned in the spring to Philadelphia.

101 X Q. In your answer to question "ten" "you stated that your father died May 13th, 1879." Where did he die?

A. In the city of Philadelphia.

102 X Q. Were you at his house when he died?

A. I was.

103 X Q. Who took charge of his personal effects in the city of Philadelphia after his death?

A. I don't know that.

104 X Q. Was he living in a furnished house of his *arm* at the time of his death?

A. I suppose it was his own; the house was sold by the sheriff after his death. (I mean the notice was served to vacate the house on the day he died.)

(NOTE.—The words in parentheses inserted before signing.—J. C., N. P.)

105 X Q. Who lived in the house with him at the time of his death?

275 A. I was with him. I nursed him from the time he first took sick until he went into the coffin.

106 X Q. Was any one else with him?

A. No, sir; except the family when they visited him.

107 X Q. Then were you in charge of the house?

A. I was.

108 X Q. What did you do with the furniture and effects after his death?

Q. When Mrs. Smith came home I gave charge to her, she being elder than myself.

109 X Q. What did Mrs. Smith do with the household furniture and other effects of the house?

A. As far as I know it was sold at private sale and the money divided among the children.

110 X Q. What did it amount to?

276 A. I can't remember.

111 X Q. How much did you get for your share?

A. I can't remember what I got. I bought some articles.

112 X Q. State the articles you bought.

A. A regulator clock and a carpet and one toilet set; that's all I remember.

113 X Q. Did your father have or keep any books of accounts showing his former business?

A. I can't say whether he did or not.

114 X Q. Were there any account books about the house?

A. I can't say.

115 X Q. Do you know whether there were any or not?

A. I don't remember whether there was or not. I don't remember seeing any in my father's side.

277 116 X Q. What do you mean by your father's side?

A. Books belonging to my father.

117 X Q. Did you see any in anybody else's side?

A. Yes; I saw Capt. Smith's books in his room.

118 X Q. In whose room?

A. Capt. B. H. Smith's room.

119 X Q. In Capt. B. H. Smith's room, where?

A. In Arkansas, on Bellevue plantation.

120 X Q. I am now asking you about books and other things which your father left, when he died, in his house in Philadelphia. What books of account did you see there?

A. I never seen any account books in the city of Philadelphia.

121 X Q. Did Mrs. Smith take full charge of the house in which your father died and all that was in it, when you resigned it to her as your elder sister?

278 A. She always had full charge, but she was not home at the time pa was taking sick, and I acted in her place. When she came to the city she took full charge of my father's house after his death for a short time, and had been his housekeeper for years before that.

122 X Q. How long was she in charge after your father's death?

A. I can't remember the lenght of time.

123 X Q. How long after your father died before Mrs. Smith arrived and took charge of the house?

A. To the best of my knowledge, he was not dead ten hours, because the crape was on the door; yes; I remember now the crape was on the door. (He died to-day, as it were, and Mrs. Smith arrived the following day.)

(NOTE.—The words in parenthesis inserted before signing.—J. C., N. P.)

124 X Q. Was the house well furnished?

A. It was not.

279 125 X Q. Did you visit the State of Arkansas after you returned from there in the spring of 1874?

A. I did.

126 X Q. When did you go there and how lang did you stay?

A. We arrived in the fall of 1874. I can't tell exactly when I returned to this city.

127 X Q. When did you return to Philadelphia?

A. In the spring; I don't remember the date.

128 X Q. At that visit to Arkansas did you visit Bellevue plantation?

A. I did, frequently.

129 X Q. Was Capt. Smith in full charge of Bellevue plantation at that time?

A. He had entire charge of everything.

130 X Q. Was he gin-ing and shipping cotton as usual from the crop of Bellevue plantation?

280 A. He was.

131 X Q. Was the partnership business of your father and Capt. Smith still running on as usual?

A. It was as far as I know.

132 X Q. In your answer to question "twelve" you were asked "who managed and superintended Yellow Bayou plantation while your father owned it in 1868." What answer do you make to this question?

A. Capt. Benjamin H. Smith, as far as I know; yes, I know it was him.

133 X Q. Was anyone else on the place as manager?

A. No; I think not; there were carpenters, and also the other years I was down there they were overseers in general, but Capt. Smith was the main superintendent, and also attended to all his business as far as I know.

134 X Q. How far do you know?

281 A. Well, I know that he did all the shipping of pa'- cotton or a good part of it.

135 X Q. Did your father trust Capt. Smith to ship and sell the cotton produced on Yellow Bayou?

A. He did trust him?

136 X Q. Were you on Yellow Bayou in 1868?

A. I was not in 1868.

137 X Q. How do you know that Capt. Smith managed to make the crop of 1868?

A. I heard pa say so.

138 X Q. When did you hear your pa say so and where?

A. In 1869, in the winter, at Yellow Bayou plantation.

139 X Q. What occasion brought up such a conversation between you and your father?

A. I heard it through conversation between my mother and father.

282 140 X Q. Was your father and mother there during the fall of 1868 and spring of 1869?

A. I think my father was; mother was not there in 1868; whether he returned or not I do not know. I think he did, though, to the best of my knowledge; we went down again in 1869, in the fall; that was my first visit.

141 X Q. Who accompanied you on your first visit to Arkansas?

A. My mother, I think; Mr. Smith also; and, as well as I can remember, my father.

142 X Q. Are you positive that your father was with you on your trip?

A. I am not positive; I can't remember that far back.

143 X Q. Are you positive that you met your father on that trip at Yellow Bayou?

A. No; we landed at Bellevue plantation. I know he was down there, to the best of my knowledge.

283 144 X Q. What do you mean by the best of my knowledge; do you intend to express doubt by that expression?

A. No, sir; I know it to be a fact, as far as my memory charges me.

145 X Q. When you left Yellow Bayou in 1870 who did you leave upon it acting as manager?

A. Mr. Scott was a carpenter—he had charge of the mules—and Capt. Smith was the general manager over Mr. Scott and things in general; that is what I heard my father say.

146 X Q. Did your father come away at the same time that you did in 1870?

A. He did.

147 X Q. Did you return in the fall of 1870 to Yellow Bayou?

A. No, sir.

148 X Q. When did you return next?

284 A. I think in the year of 1873, in the fall, or it might have been in 1872, the fall; I don't remember that year. I do distinctly remember being there in the fall of 1873 and the spring of 1874.

149 X Q. Who was local manager on Yellow Bayou when you got there in the fall of 1873 and who was local manager when you came away in the spring of 1874?

A. I don't distinctly remember who was there at that time, but I think Mr. Kirk was there, as the rest of them, as under manager

under Capt. Smith's instructions. (I think Mr. Simmons was there as under manager in place of Mr. Kirk.)

(NOTE.—The words in parenthesis inserted before signing. J. C., N. P.)

150 X Q. In the spring of 1874, when you left there, from whom did you get money to come away?

A. From my father.

151 X Q. Was your father down there at the time?

A. I know he was.

152 X Q. Are you positive that he was there?

285 A. I am almost sure he was.

153 X Q. Do you remember this circumstance a- clearly as you do the fact that your father told you that Capt. Smith was in full charge as manager of Yellow Bayou?

A. I often heard him say so. I heard him say to Mr. Kirk to go to Capt. Smith for all orders and directions; also that he would tell him what was to be done.

154 X Q. Did you hear him tell this to Mr. Kirk in the spring of 1874 on Yellow Bayou?

A. I am not positive whether it was on Yellow Bayou or at the landing, but I heard him often say this to Mr. Kirk, especially as we were about leaving for the North.

155 X Q. Question No. "fourteen" is in these words: "Do you know whether there was any agreement or contract between your father and Capt. Smith by which Capt. Smith was to be compensated for his services in superintending and managing the Yellow Bayou and Bellevue plantation?" What is your answer to this?

A. I never knew of any agreement and never knew he was
286 paid. I know he never was paid by my father, Wm. H. Todd. (I never knew of any written agreement.)

(NOTE.—The words in parenthesis inserted before signing. J. C., N. P.)

156 Q. Does Wm. H. Todd's estate still owe Capt. Smith for these services?

A. We all do; yes; the estate does owe him. (I mean Wm. H. Todd's heirs, not his estate, for he had no estate.)

(NOTE.—The words in parenthesis inserted before signing. J. C., N. P.)

157 X Q. Are you all willing to pay it to him now?

A. Some members might; I can't say for others, but I say pay him; it justly belonged to him; he worked for it.

Adjourned until Friday morning at 9 o'clock a. m., June 7th, 1883.

Cross-examination of Mrs. BOWLES continued by Mr. WADDELL:

158 X Q. Who was manager on Yellow — plantation to make the crop of 1875?

A. Mr. Wm. Kirk was under manager.

159 X Q. Why do you call him under manager?

287 A. He was under Capt. Smith's directions; those were the orders I heard *gave* Mr. Kirk by Wm. H. Todd.

160 X Q. Where did you hear Wm. H. Todd give those orders to Wm. Kirk?

A. On the gallery at Yellow Bayou plantation; it was in the spring of 1875, previous to our leaving there for Philadelphia; if I am not mistaken he, Mr. Kirk, came home with us and went back in the fall; I think about October, 1875.

161 X Q. Is the foregoing answer made according to the best of your knowledge and belief?

A. It is.

162 X Q. Who was manager on Yellow Bayou plantation to make the crop of 1876?

A. Mr. Kirk was under manager. (Mr. Mole was manager in 1876 and 1877, and not Mr. Kirk.)

(NOTE.—The words in parenthesis inserted before signing. J. C., N. P.)

163 X Q. Do you state this to the best of your knowledge and belief?

A. Yes, sir.

164 X Q. Why do you call him under manager for the year 1876?

288 A. He was sent to Capt. Smith for orders.

165 X Q. Who sent him to Capt. Smith for orders?

A. Wm. H. Todd, when at Yellow Bayou.

166 X Q. Did you hear Wm. H. Todd at Yellow Bayou direct Mr. Kirk to go to Capt. Smith for orders in the management to make the crop of 1876?

A. I often heard my father say so, but the time and place I don't remember.

167 X Q. Did he say it to Mr. Kirk?

A. Previous to 1876 I heard him say so to Mr. Kirk; in the spring of 1875 he said he should go to Capt. Smith for all orders. I was not at Yellow Bayou in 1876; it was in the spring of 1875 I heard my father give these orders to Mr. Kirk; I think it was at Yellow Bayou.

168 X Q. Who managed Yellow Bayou plantation to make the crop of 1877?

A. As far as I know, I think Capt. Smith; who the under manager was I don't remember. (I think it was Mr. Mole.)

(NOTE.—The words in parenthesis inserted before signing. J. C., N. P.)

289 169 X Q. Were you on the plantation in 1877?

A. I was not.

170 X Q. You have stated that you were not on the plantation in 1876; is this correct?

A. Yes, sir.

171 X Q. Did you ever know whether or not Mr. Kirk's management of Yellow Bayou plantation was satisfactory to your father?

A. As far as I know, I think it was.

172 X Q. What did Mr. Kirk do with the cotton he produced on Yellow Bayou plantation; did your father intrust him with the selling of it?

A. As far as I can remember, Capt. Smith had charge of all the shipping of the cotton.

173 X Q. Did your father trust Capt. Smith to sell the cotton produced on Yellow Bayou?

A. He did; he placed the utmost confidence in him.

290 Re-examination of Mrs. BOWLES by J. T. ROBINSON:

1 Q. Can you state who married Capt. Smith, and why was he married at Trenton or New Brunswick, in New Jersey?

A. The Reverend Doctor Berg; they were married at New Brunswick and not at Trenton; they were married there because they wanted to.

2 Q. Do you know whether any of the family were with them when they were married?

A. Yes, sir; my father and other witnesses.

3 Q. Do you know who married your father and mother?

A. I don't distinctly remember hearing my mother say that the Rev. Doctor Berg married them.

4 Q. When you say you don't distinctly remember who married your father and mother, do you mean to say you were present and don't distinctly remember the circumstances?

A. No; I had forgotten the minister's name, and I spoke
291 too quick when I answered the previous question in that way.

5 Q. Did your father ever cultivate the Walker place that you know of?

A. Not that I remember of.

6 Q. You say, in answer to the cross-inter-*i*gation No. "eighty-two," that your next visit to Arkansas was in 1873 and 1874. Did you make another visit after this? And, if so, state when.

A. I did, in the fall of 1874.

7 Q. How long did you remain that time, and when did you return to Philadelphia?

A. Some few months, and returned in the following spring—1875.

8 Q. What year was your mother in Arkansas when you were with her?

A. In 1869, in the fall, and 1870, in the spring, when I was with her.

292 Recross-examination of Mrs. BOWLES by Mr. WADDELL:

1 X Q. Since the adjournment yesterday afternoon have you had any means of refreshing your memory, or has any one given you information which you have this morning given as your evidence?

A. I have refreshed my memory, but have received no information.

2 X Q. How have you refreshed your memory?

A. I don't know what question it was to. I made a mistake in one year—of 1872 being 1873.

3 X Q. How did you discover that mistake? Was it through conversation with any one; if yes, who?

A. No, sir; through my own mind.

4 X Q. In your own mind what was it that you stated in your deposition yesterday and found to be incorrect?

A. I ignored Mr. Simmons and gave the wrong year.

293 5 X Q. How is it that you know to-day that Capt. Smith was married at New Brunswick and did not know it yesterday?

A. I told you yesterday that he was married at New Brunswick, but made a mistake in mentioning Trenton, as I was small at the time; so I heard them say.

6 X Q. Have you at any time within the last week talked with any one as to what your evidence would be in this case; if yea, who have you talked to?

A. With my own opinion.

7 X Q. With any one else than your own opinion?

A. I have not.

8 X Q. Have you had no conversation with Capt. Smith or with Mrs. Smith on this subject since you have been in Philadelphia on this trip?

A Not on this business particularly.

294 9 X Q. Do you mean not on the subject of what your evidence would be in this case?

A. I do.

10 X Q. Have you had any conversation with Capt. Smith's attorney on this subject?

A. I have not.

11 X Q. Since answering the foregoing question, No. "ten," has your deposition been read over to you and have you made the corrections as noted in the margin by the notary?

A. I have.

12 X Q. At whose house did you stop in the city last night?

A. My sister's house, where I always stop when in the city and when she is here—I mean my sister, Mrs. Smith.

13 X Q. Have you been stopping with her all the time
295 that you have been here giving your deposition on this trip?

A. I have, and some time before.

MRS. JENNIE W. BOWLES.

Sworn and subscribed before me this 8th day of June, A. D. 1883.

JAMES CROWE,
Notary Public.

296 *Deposition of Mrs. Captain Bergman H. Smith.*

1 Q. What is your name?

A. Josephine V. Smith.

2 Q. Are you married or single?
A. Married.
3 Q. Who is your husband?
A. Captain Bergman H. Smith.
4 Q. When were you married?
A. August 11th, 1864.
5 Q. Where were you married?
A. In New Brunswick.
6 Q. By whom were you married?
A. Proffes-or Berg.
7 Q. Were any of your family present; and, if so, who?
A. My father was present.
8 Q. What was your father'- name?
A. Wm. H. Todd.
9 Q. Did he own any property in Arkansas?
A. He did.
10 Q. Please state what that property was.
A. Yellow Bayou and half of Bellevue plantation-.
11 Q. Who owned the other half of Bellevue plantation?
A. My husband, Capt. Smith.
297 12 Q. State, as near as you can, when your husband first went West to Arkansas.
A. I think it was in the year 1867.
13 Q. State what took him to Arkansas.
A. I do not know.
14 Q. What business did your husband engage in when he went to Arkansas, if any?
A. He did not remain the year 1867, I think, but engaged in making cotton on Yellow Bayou in 1868.
15 Q. When did he acquire a half interest in Bellevue plantation?
A. I am not positive of the year; I think it was in the year 1870.
16 Q. Who did Capt. Smith buy half interest in Bellevue from?
A. From my father.
17 Q. Who has managed that plantation from the time your husband purchased the half interest you speak of up to the present time?
A. Capt. Smith.
18 Q. Has any one else managed that plantation at any time since your husband purchased *of* the half interest you speak of?
298 A. No one.
19 Q. Do you know who has managed the Yellow Bayou plantation since your husband engaged in making cotton on that place in 1868?
A. In 1868 and 1869 Capt. Smith was there entirely, and from that time on he had entire charge of my father's business on the place while he was absent, and would also call upon him to attend to his affairs on Yellow Bayou at different times up to the time of his death.
20 Q. Were there any other managers on Yellow — during the years 1868 and 1869?

A. No, sir.

21 Q. Were there any other managers on the plantation after 1869? If so, give their names as near as you can remember.

A. Yes; there were men placed there; my father put men there. I don't remember the first one. I don't remember them all. I know Kirk was one; Mr. Mole, Mr. White, and a man by the name
299 of Simmons; that is all I remember. They were hired by the month, some at fifty dollars per month, to do the carpentering work, feed mules, fix up fences and levees, and such things as that.

22 Q. Did any one exercise, or have any, control over these men you speak of besides your father?

A. Yes, sir; Capt. Smith had entire control over them all; they came to him for orders and instructions.

23 Q. Who owns Yellow Bayou now?

A. I don't know positively who owns it; all I know is from hearsay.

24 Q. Do you know whether your father owned it at the time of his death?

A. I think he was in possession.

25 Q. How long did Captain Smith exercise control over Yellow Bayou plantation?

A. From 1868 until father died.

26 Q. Do you know whether Capt. Smith received or was
300 to receive any compensation from *from* your father for his services on Yellow Bayou and Bellevue plantations?

A. He never did receive any money for his services.

27 Q. Did he ever receive anything from your father for such services?

A. No, sir; never in anything (except a judgment sued out by my husband against my father in 1877 or 1878).

NOTE.—The words in parentheses inserted at the request of witness upon reading the same to her before signing.—Notary.

28 Q. Do you know of any agreement or contract, written or unwritten, between your father and Capt. Smith in regard to Capt. Smith'- services on Yellow Bayou and Bellevue plantations?

A. There was never any written agreement, to my knowledge; if there was I would have known it; I have frequently heard them talking about it.

29 Q. Please state what you heard them say about, as near as you can recollect.

301 A. One time he said he was unable to pay him and after — said to me that he could not pay him, as he was so embarrassed in circumstances.

30 Q. Did you ever hear him say that he did not owe Capt. Smith anything for his services?

A. No; I never did.

Q. Did you ever receive a letter from your sister, Mrs. Edwin Mole, in reference to this suit?

A. I did.

32 Q. Please file it and mark it.

A. I file it and mark it Exhibits Z, D, C, V, P.

33 Q. Please state how you came in possession of it.

A. She gave it to me to read and promised to give me the other to read.

34 Q. Have you had it ever since or did you give it to any one else to read?

A. I did give it to some one else to read; I gave it to my brothers Derringer and Willie; Mrs. Mole had read it, and I forget
302 whether my brother Dick read it or not; they all knew it in the family that the letter came.

85 Q. For what purpose did Mr. Mole give it to you, and did any one take it out of your hands?

A. What her purpose was in giving it to me I cannot say; no one took it out of my hands. I was in the act of handing it to her when my brother, William Todd, asked to look at it again. I handed it to him and he opened it a minute and replied, I will keep this, as my lawyer will want it. He mentioned this letter to the lawyer before, and he, the lawyer wanted it; that is all I know of it. The lawyer is at 514 Walnut St. and is D. B. Measey.

36 Q. Did your father exercise any control or take upon himself any part of the management of the Bellevue plantation since Capt. Smith bought a half interest in the plantation?

303 A. No; he left it entirely to Captain Smith.

37 Q. Did you ever tell your father that Capt. Smith was going to charge him eight thousand dollars for services at his death, and did your father say in response, I don't consider I owe one dollar?

A. I never said such a thing in all my life—never—nor did he ever make mention that he did not owe Capt. Smith one dollar.

38 Q. Did Mrs. Mole live at your father's residence the last year of his life or any portion of it?

A. Yes; she has at intervals. Yes; she was — a short time before his death, but a very little while at other times.

39 Q. Did your father have a severe spell of sickness about 1874?

A. Yes.

40 Q. Who nursed him and waited on him?

304 A. I did and Mrs. Bowles. My sister assisted me at different times; she was often sick.

41 Q. Did your sister, Mrs. Mole, remain a portion of the time in the house with him, and did she visit him up to the time of his death?

A. No, sir; she was not in the house at all during that spell.

42 Q. Where was your father's home?

A. In Philadelphia at different times.

43 Q. Did your father ever talk to you in presence of Mrs. Mole about the sale of your father's interest in Bellevue for a balance of the Halladay debt and a sale to satisfy a judgment against your father and in favor of one James McMurray?

A. No; not in her presence.

44 Q. Do you know — long your Brother Willie — stay on Yellow Bayou?

A. I don't remember.

45 Q. Do you know whether there was any unfriendly feeling or any trouble between Mr. Mole and Capt. Smith of any kind growing out of their business relations?

305 A. Mr. Mole never liked Capt. Smith; it was all about Yellow Bayou, because Capt. Smith had the management; I think it was all jealousy.

46 Q. Who kept house for your father in 1877?

A. I did for the summer months and late in the fall. I went South every winter. I was home in the spring of 1878.

47 Q. Did you ever see about your father's house, in 1877 or 1878 or at any other time, any books of accounts of the Yellow Bayou plantation?

A. I never saw any in Philadelphia, and I never knew him to keep a book of accounts in Philadelphia.

48 Q. Do you know whether Mr. Mole was in the habit of visiting your house on Bellevue and advising with Capt. Smith about the business of the Yellow Bayou plantation? If you know please state fully.

306 A. Yes; he called there for different orders; my father would write to Capt. Smith, telling him what he, Mr. Todd, wanted Mole to do; when Capt. was away he came to me for different, various things needed on Yellow Bayou.

Cross-examination of Mrs. JOSEPHINE SMITH by Mr. WADDELL:

1 X Q. When did Mr. H. Todd become the owner of Yellow Bayou and Bellevue plantations?

A. I don't know when he became the owner of Yellow —. I think in 1867 he bought Bellevue plantation.

2 Q. When did Capt. Smith become owner of an undivided half of Bellevue plantation?

A. I am not pos-tive of the year, but I think it was in 1870?

3 X Q. What did he agree to pay your father for the half of Bellevue?

A. I think it was twenty thousand dollars.

4 Q. On what kind of terms of payment?

A. I do not know exactly.

307 5 Q. Did he pay all in cash at the time of purchase?

A. That I do not know.

6 Q. Was your husband a man of large cash means when you married him?

A. Yes; he was a man of means. What you mean of large means I do not know.

7 Q. What do you mean when you say he was a man of means?

A. He had money.

8 Q. How much money?

A. I never asked him.

9 Q. How did you know him to be a man of means?

A. He always seemed to have plenty, and always paid his debts.

10 Q. Were his debts large or small?

A. Very small. He always paid cash.

11 Q. Did you have any other means of knowing that Capt. Smith was a man of means, except from the fact that he paid his small debts and paid cash for what he wanted?

308 A. He had money to lend my father, so he was a business man, doing business in New York; my father wrote to New York, and that is the way we know him to be; what he said was so.

12 Q. Did you hear him tell your father he had money?

A. No.

13 Q. How do you know that he told your father so?

A. I don't know. I heard my father say he had money, but how he found it out I don't know.

14 Q. How do you know he was a business man doing business in New York?

A. He told me so.

15 Q. So when did your father write in New York and what answer did he get?

A. To the parties he was doing business with; I mean Capt. Smith; they said or wrote he was a man of the highest integrity—a business man standing high in society.

16 Q. Did they say anything about his means or the busi-

309 ness he was in; if so, what?

A. They said he was a man of means; he was doing business with the house altogether, and spoke very highly of him.

12 Q. Was he a partner in the house or was he a salaried man?

A. Partner. (I don't know what a partner is, but they were in the shipping business together.)

(NOTE.—The words in parentheses inserted at the request of the witness upon the reading of the *reading of the* deposition to her and before signing.)

18 Q. Name the house.

A. Yates and Porterfield, 115 Wall street, New York.

19 Q. What business were they in?

A. They owned vessels (vessels).

20 Q. What kind of vessels?

A. I do not know. I think sailing vessels.

21 Q. Do you know how many vessels they owned and what interest he had in them?

A. I do not.

22 Q. From August 11, 1864, to the year 1867, or the time

310 which your husband went to Arkansas, how and in what business was your husband engaged?

A. All I know was with this house, and he had some interest of some kind in Brooklyn.

23 Q. Did you live in New York or Brooklyn from 1864, the time of your marriage, to the time that your husband went to Arkansas?

A. Yes; only when I visited my mother we lived in Brooklyn.

24 Q. When did your husband give up business in New York and Brooklyn?

A. When he went South.

25 Q. Had the New York or Brooklyn business been successful from the time that you were married until the — you went South?

A. The New York business was.

26 Q. To whom did your husband sell out his New York business and interest in the Brooklyn — when he went south?

A. I do not know.

311 27 Q. Do you know how much he got for it, or whether he got anything at all?

A. I don't know anything about what he got; I never asked him; I thought it was sufficient for him to know.

28 Q. You state in answer to question No. thirteen that you do not know what took your husband to Arkansas; do you know whether or not your father, Wm. H. Todd, offered him any inducements to go to Arkansas with him?

A. I know he was a partner in 1868 and 1869, and what inducements offered beforehand I do not remember.

29 Q. A partner in what?

A. Crops.

30 Q. What crops?

—. ——.

31 Q. Cotton crops from what place?

A. Yellow Bayou.

32 Q. What interest did your husband have in the partnership business in the crop with your father?

A. One-half interest.

312 33 Q. Did your father own the plantation, mules, and tools?

A. I don't know about the mules and tools, but the place belonged to him, my father.

34 Q. What did Capt. Smith contribute or put into the partnership business?

A. I don't remember exactly.

35 Q. Do you remember generally?

A. He put some money in the concern; I don't remember.

36 Q. Do you know the terms of that partnership?

A. Only as partners on Yellow Bayou—spoken of as partners.

37 Q. Spoken of by whom?

A. My fath- and Capt. Smith.

38 Q. What did your father and Capt. Smith say when they spoke about the partnership to you?

A. They said they were partners.

39 Q. What rent did your father charg- the partnership firm for the use of the land and mules?

A. I don't know.

40 Q. Correct, if you desire, your answer to cross-interrogatory No. thirty-three.

313 A. Since thinking it over, he did own some of the mules and tools.

41 Q. When did he buy some of the mules and tools?
A. I don't know.
42 —. Where did he buy some of the mules and tools?
A. That I don't know.
43 Q. From whom did he buy some of the mules and tools?
A. I never asked him.
44 Q. Did you ever ask anybody else?
A. No.
45 Q. How did you know he, Smith, owned some mules and tools?
A. He told me so.
46 Q. When did he tell you so?
A. I don't remember.
47 Q. Where did he tell you so?
—. I don't remember that either; it is so far back.
48 Q. Do you remember about how far back he told you this?
A. No.
49 Q. Do you remember distinctly that he ever told you at all?
314 A. There was a conversation took place about it.
50 Q. When and where?
A. I don't remember.
51 Q. What business was your husband engaged in for the year 1867?
A. I could not state exactly that year. He went down South with my father that year. Whether he had sold out his interest in New York before he went down I don't remember.
52 Q. Then you say he went to Arkansas in 1867?
A. Yes; some time in that year.
53 Q. How long did he remain there in the year 1867?
A. I forget.
54 Q. About how long was he gone?
A. I forget that exactly.
55 Q. Where were you while he was gone?
A. With my mother; I staid with her.
56 Q. What time of the year did he go down in 1867?
A. I don't remember.
315 57 Q. Did he stay long enough to make a crop?
A. No.
58 Q. Did he superintend, manage, or render any services to Mr. Wm. H. Todd for 1867 for which he charged or was entitled to receive wages?
A. I know nothing about it — I mean nothing about 1867—excepting that they went down together.
59 Q. Did they come back together?
A. I think so.
60 Q. When did you first visit Yellow Bayou?
A. In 1868, in the fall.
61 Q. Who accompanied you on that visit?
A. My brother, Richard Todd.
62 Q. Any one else?
A. No.

63 A. Had Capt. Smith gone down in advance of you?
A. Yes.
64 Q. How long in advance?
A. I don't know; I forget.
65 Q. Had he been down there during the spring and summer of 1868?
316 A. Yes, he had been there during the summer of 1868; he was very sick when I arrived.
66 Q. What time did you arrive?
A. In the fall; I think it was in the month of October.
67 Q. Had he been there during the spring of 1868?
A. He had made a crop when I got there—I mean of cotton and corn growing.
68 Q. Had you father been down there with him during the spring and summer?
A. No, sir; in 1868.
69 Q. Was your husband an experienced cotton planter as early as the spring of 1868?
A. He made a good crop then.
70 Q. The question was, was he an experienced cotton planter as early as the spring of 1868?
A. I am no judge of that matter.
71 Q. Had he ever seen a cotton crop planted prior to 1868?
A. Ask him about that.
72 Q. He is not on the stand, I cannot ask him the question; I ask the question to you.
317 A. I don't know.
73 Q. Did he have charge of the crop of 1868 on Yellow Bayou?
A. He had.
74 Q. Did your father, Wm. H. Todd, place him in charge?
A. He did.
75 Q. Who cultivated the Bellevue plantation to make the crop of 1868?
A. I don't remember in 1868; I don't recollect that.
76 Q. Was your husband and father partners in the Bellevue crops of 1868?
A. I don't remember.
77 Q. When you went down in the fall of 1868 where did you find your husband sick; was he on Yellow Bayou or Bellevue plantation?
A. On Yellow Bayou.
78 Q. Who was keeping house on Yellow Bayou plantation when you went down there in the fall of 1868?
A. Capt. Smith.
79 Q. Was he keeping bachelor's hall?
318 A. Well, he was there alone, with the exception of two servants.
80 Q. Do you mean two house servants?
A. I do.
81 Q. After you arrived did you take charge of the house?

A. Yes.

82 X Q. How long did you remain?

A. Until the following June.

83 Q. From that time on, as long as you remained there, who bore the expenses of Capt. Smith's family at Yellow Bayou—I mean the household expenses?

A. Capt. Smith alone.

84 Q. From what source did you draw the family supplies?

A. Well, he placed them in the house for me to use from.

85 Q. Do you know to what account they were charged?

A. To his own account.

86 Q. To his own account with whom?

A. To his own private account.

87 Q. To his own private account with whom?

A. With himself, that is all I know.

88 Q. Will you please have your deposition thus far read
319 over to you and make such changes, if any you desire, to the manner in which your answer was written.

A. Yes; I desire to have it read over to me.

Counsel for the defence enter a protest against the method of examining the witness.

The counsel for the plaintiff- yield to the protest of the defendant's counsel and leaves it to the desire of the witness.

A. I prefer to wait till my deposition is completed and have it all read over to me then.

89 Q. Did the partnership business of Todd & Smith on Yellow Bayou plantation, in making the crop of 1868, provide the family expenses of Capt. Smith?

A. No.

90 Q. When you left Yellow Bayou plantation, in June, 1869, where did you go and when did you return?

A. I went to Philadelphia and stayed with my mother,
320 and returned during the fall months of the same year.

91 Q. Where did you leave Capt. Smith, and how was he engaged in June, 1869?

A. He took me to Philadelphia and remained a short time and returned to Arkansas the same year.

92 Q. Was Captain Smith engaged in any business in the State of Arkansas during the year 1869; if yea, what business?

A. He was raising cotton and corn.

93 Q. On what plantation?

A. Yellow Bayou.

94 Q. Was he and your father partners in the crop of 1869 on Yellow Bayou?

A. They were partners in the crop.

95 Q. Did your father spend any considerable portion of his time on Yellow Bayou in management of the crop of 1869?

A. We went down together—pa, ma, and myself—late in the fall of 1869.

321 96 Q. Did your father entrust the management of the business in 1869 to Capt. Smith—I mean on Yellow Bayou?

A. He did.

97 Q. Did Capt. Smith have the crop gathered in the fall and winter of 1869 and shipped to market?

A. Yes.

98 Q. Who cultivated Bellevue plantation for the year of 1869?

A. I do not know.

99 Q. Did your father own Bellevue at that time?

A. He did.

100 Q. Was it cultivated?

A. I don't know.

101 Q. Do you not have to go through Bellevue plantation to get to Yellow Bayou from the steamboat landing?

A. Yes.

102 Q. In your visits to Yellow Bayou in the fall of 1869 did you pass through Bellevue?

A. Yes.

322 103 Q. Did you see any crop on Bellevue when you passed through it in 1869?

A. I don't remember.

104 Q. Was Capt. Smith at Yellow Bayou when you got there in the fall of 1869?

A. He was.

105 Q. How long did you remain at Yellow Bayou on that visit and where did you go when you left there?

A. I went from Yellow Bayou to Bellevue.

106 Q. When?

A. I don't know how long we remained, but I think we was some time in 1870 that we went to Bellevue; the weather was cold when we went there.

107 Q. Was it early in the year 1870 when you went there?

A. It was very cold; it was some time in the winter; I think it was near to February, because it was bitter cold.

108 Q. How long did you remain at Bellevue before you left it?

A. I stayed all that year.

323 109 Q. Who cultivated Bellevue to make the crop of 1870?

A. Capt. Smith.

110 Q. On what account was it cultivated?

A. Capt. Smith cultivated the place himself, but they were joint owners—I mean Capt. Smith and Mr. Todd.

111 Q. Do you mean they were joint owners of the plantation, mules, and tools, and the crop produced on it in 1870?

A. They owned the land together, and the mules and tools they owned jointly; as to the crop I could not exactly state?

112 Q. Do you mean to state that you do not know that Capt. Smith was the joint owner with your father in the Bellevue crop of 1870?

A. I could not state that; I am not acquainted with that matter; that is a matter I never inquired unto, only I know that it was divided at the gin, and whatever was made in same manner—I

mean the cotton was divided between Capt. Smith and Wm. H. Todd.

324 113 Q. How was the cotton divided at the gin?

A. I don't know.

114 Q. Who divided it.

A. That I don't know; I was not present.

115 Q. How do you know it was divided at the gin?

A. My father and Capt. Smith would meet there for that purpose?

116 Q. How do you know that your father and Captain Smith would meet there for that purpose?

A. Capt. said he was going over there for that purpose.

117 Q. Do you know that he went for that purpose?

A. When he was going to divide cotton he would carry slips of paper to mark weight on and a pencil.

118 Q. Are you positive he carried a pencil?

A. I am positive he carried — pencil.

119 Q. Do you remember whether it was a red or black pencil, and how long was it?

A. No, sir.

325 120 Q. When you went on to Bellevue plantation in the spring of 1870, did you observe whether or not there had been a cotton crop made on said plantation in 1869?

A. No.

121 X Q. In going from Yellow Bayou to Bellevue do you not pass through or along the turn road of the cotton field at Bellevue?

A. I don't recollect, it is so far back.

122 Q. Was it any further back than the pencil you have just refer-ed?

A. The pencil refer-ed to was used at the Bellevue gin in dividing the crops.

123 Q. How far back was the pencil business?

A. From the crop of 1868.

124 Q. What crop of 1868?

A. Cotton crop.

125 Q. Cotton crop produced on what place?

A. Yellow Bayou.

126 Q. Did Bellevue produce a crop in 1868 and 1869?

326 A. Not that I know of or remember.

127 Q. Are your answer- from question No. 122 to No. 126 as you desire them to stand? Examine them and correct them in answer to this.

A. They are all right excepting the answer to question No. 125, and in reference to that I would say there was a lead pencil — to divide the crop of 1868 and 1869—I mean the crop of Yellow Bayou.

128 Q. When did you leave Bellevue plantation first, after you went there — live in the month of February, 1870?

A. In the month of June, 1871.

129 Q. Where was your father during the time that you were on that stay at Bellevue?

A. During the winter month- he was on Yellow Bayou with my mother.

130 Q. Do you mean the winter of 1870 and 1871?

A. Yes; he was there both parts of that winter.

327 131 Q. When did your father come down in the fall of 1870, and when did he go away?

A. I don't remember the month that they came down.

132 Q. Who do you mean by they?

A. My father and mother.

133 Q. When did they go away?

A. My father and I carried my mother's corpse — in June following.

134 Q. Do you mean June, 1871?

A. I do.

135 Q. At the time your mother died, which you say was in June, 1871, who was the manager of the crops — cultivation, then in progress, on Yellow Bayou?

A. Capt. Smith was the head manager, and instructed any one that was there how to attend to matters.

136 Q. Whom did he leave there to instruct how to attend to matters before and at the time of your mother's death?

A. A man by the name of Scott, who my father had hired

328 a short time to build negro cabins and feed his mules and fix up his fences.

137 Q. How do you know that your father had hired Scott to build cabins, feed mules, fix up fences, &c.?

A. My mother told me so and I have heard my father say so.

138 Q. What did your father and mother say on that subject and what brought about the conversation?

A. Seeing a strange man in the house I naturally inquired who he was, and they gave me the above answer.

139 Q. Was your father and mother both present when you made that inquiry?

A. No.

140 Q. Which one was present?

A. The first one I asked was my mother, and at other times my father talked about the man to me.

141 Q. Then, did you not ask your father about the man Scott; do I understand you so to state?

A. I don't recollect whether I asked him or how it came about.

329 142 Q. Do you recollect when it was you saw the strange man, Scott, in the house; was it in the spring of 1870 or the spring of 1871?

A. I didn't exactly remember, but I know he was there when mother died.

— Q. Do you remember seeing him in the house before your mother died?

A. Yes.

143 Q. How long before?

A. I don't know.

144 Q. Was your mother sick long before she died?

A. No; she was not.

145 —. Had this man Scott been building cabins, feeding mules, and fixing up fences before your mother died?

A. Yes.

146 Q. Whereabouts?

A. On Yellow Bayou.

147 Q. Whereabouts on Yellow Bayou?

A. On the upper part of Yellow Bayou.

148 Q. How long had he been engaged at it?

A. I don't know.

330 149 Q. Did Capt. Smith direct him in the cabin-building and mule-feeding?

A. I don't know that he directed him when my father was on Yellow Bayou, but unless my father was away I know he instructed him.

150 Q. Instructed him in what?

A. In managing or attending to anything on the place.

151 Q. Did you come away with your father?

A. In 1871, in June, I did.

152 Q. Did you hear Capt. Smith directing Scott before you left?

A. I have seen Mr. Scott at the house many times—the Bellevue house—in conversation with Capt. Smith.

153 Q. What were they talking about?

A. I don't remember exactly.

154 Q. Do you remember generally?

A. Well, I know this, that he had no business on Bellevue to call him there, unless it was Yellow Bayou business, as the two men were strangers.

331 155 Q. You say that Mr. Scott had no business to call him to Bellevue except to get orders from Capt. Smith about Yellow Bayou business, and that the two men were strangers; when was it that Scott called at Bellevue for orders?

A. At different times.

156 Q. At different times when?

A. I don't remember exactly.

157 Q. Do you remember generally? If so, state it.

A. Well, I remember seeing him there.

158 Q. In what year did you see him there?

A. In 1870, in the summer.

159 Q. Did you see him at any time after the summer of 1870 call at Bellevue?

A. I don't remember.

160 Q. How do you know he called to get orders?

A. Because I saw him there often, but don't remember the exact date; I mean in 1871.

161 Q. What time in 1871?

A. I don't remember the dates.

332 162 Q. Question No. "160" is: How do you know he called to get orders? Was it possible for him to have called on any other business?

A. I never knew or heard to the contrary.

163 Q. You never knew or heard to the contrary of what?

A. Of his calling — any business except Yellow Bayou business.

164 Q. From whom did you learn he called on Yellow Bayou business?

A. From Scott himself. He would ask for Captain, and I would reply sometimes he was not in and he would wait till his return. I would ask him what he required, and he would tell me what he wanted to see Captain for.

165 Q. What did he say he wanted to see Captain for?

A. Yellow Bayou business.

166 Q. Did he say what particular business on Yellow Bayou he wanted to see him about?

A. He always mentioned the matter, whatever it was, at
333 the time, but, of course, I can't remember the exact words; it is too far back.

167 Q. Had your father employed Mr. Scott?

A. He said he did.

168 Q. Was Mr. Scott a Northern or Southern man?

A. He told me he was a Northern man, and had never seen a cotton place before he went South.

169 Q. Where did your father employ him?

A. I don't know where he got him; I know he taught school on Yellow Bayou, and it may be there is where he saw him before employing him.

170 Q. Did he teach school on Yellow Bayou in 1870, or prior thereto?

A. Not prior; it must have been in 1870.

171 Q. How long had he been South, and what opportunity had — to become acquainted in cotton planting?

A. I don't know.

172 Q. When you left there in June, 1871, with the remains of your mother, where did you go?

334 A. To my father's home in Philadelphia.

173 Q. When did you return to Bellevue?

A. The next fall; I can't state the month correctly.

174 Q. In whose company did you return?

A. My sister, Mrs. Strong, and nurse; I forget if my father was with me.

175 Q. Refresh your memory and say whether or not your father was with you.

A. After thinking, I don't think he was.

176 Q. Did you have any gentleman attendant on that trip—your brother or any one else?

A. Not that I remember.

177 Q. How long did you remain on Bellevue on that stay?

A. Until late in the spring of 1872.

178 Q. Did your father come down to Yellow Bayou in the fall of 1871, either before or after you went down?

A. He came down after we arrived.

335 179 Q. Did he spend the winter there?

A. Part of it.

180 Q. What part of it?
A. The latter part.
181 Q. What month do you include in the latter part?
A. February.
182 Q. Was he there any other month than February of that year, 1872?
A. I don't remember; we were there a long while before he came; when we went it was very late in the fall.
183 Q. Had the crop of 1871 on Yellow Bayou been gathered and shipped before your father got there?
A. I don't remember.
184 Q. Who managed the gathering and shipping of the Yellow Bayou of 1871?
A. Capt. Smith shipped the cotton, and I presume Scott gathered it.
185 Q. Why do you presume Scott gathered it; was he employed for that purpose?
A. Well, he was there on the place attending to different
336 things.
186 X Q. Did you see him on the place attending to different things?
A. I saw him in the house at Yellow Bayou, and my father said he had hired him to work for him.
187 Q. When did your father say that?
A. At Yellow Bayou house, when I asked him who he was.
188 Q. When did you ask your father at Yellow Bayou who Scott was?
A. When my mother was there.
189 Q. What did your father say Scott was employed to do?
A. To do his carpentering work, feed his mules, and any other work that my father needed done.
190 Q. Was there a crop of cotton produced on Bellevue during the year 1871?
A. Yes, I think so.
191 Q. Under whose direction and management was it produced?
A. Capt. Smith's.
337 192 Q. Who did the crop belong to?
A. Capt. Smith and, I suppose, Mr. Todd?
193 Q. Why do you suppose Mr. Todd had an interest in it?
A. Because he owned the other half of the place.
194 Q. Did your father and Capt. Smith manage together in making, gathering, and shipping the Bellevue crop of 1871—I mean did W. H. Todd assist in the management of the same?
A. No; Capt. Smith managed alone; my father always left it to him.
195 Q. Did your father leave the entire business of Smith and Todd, on Bellevue, to Capt. Smith?
A. He left the management of the place to Capt. Smith always, and I never knew of a Todd and Smith arrangement.
196 Q. What do you mean by a Todd and Smith arrangement?

A. I mean I never knew the business done in that way; it was always in the name of Smith, as far as I understand.

338 197 Q. What business do you refer to when you say "the business?"

A. The Bellevue business.

198 Q. Then you say the business of Bellevue was conducted in the name of Capt. Smith alone. Is this correct?

A. It is.

199 Q. Why was your father's name not known in it?

A. That I could not tell you.

200 Q. At what time in the spring or summer of 1872 did you leave Bellevue and come to Philadelphia?

A. Late in the spring of 1872.

201 Q. Who was on Yellow Bayou as manager when you left there in 1872?

A. I think a man by the name of Horrigan.

202 Q. Who was Horrigan, and what relation did he bear to the Todd family.

A. In the first place I believe he was a man, and next I believe he was the former husband of Mrs. Bowles.

339 203 Q. Do you mean Mrs. Bowles, your sister?

A. I do.

204 Q. Had he been your sister's husband prior to that time?

A. Yes; she was not Mrs. Bowles at that time.

205 Q. How long had he been there?

A. He was taken sick, and he left; he was not there long.

206 Q. Had he gone down the fall before?

A. I don't remember at what time he left Philadelphia to go there exactly.

207 Q. Did he go before or after or until you and your sister, in the fall of 1871?

A. Horrigan went long before I went; he was on Yellow Bayou when I went there; he called the same evening of our arrival to see us.

208 Q. What was he doing at Yellow Bayou?

A. The same as Mr. Scott.

209 Q. Then, what was Mr. Scott doing?

A. Feeding mules, building up fences, levees, carpenter work, &c.

340 210 Q. Then, according to your recollection, your father had two mule-feeders, carpenters, and fence-builders during the fall of 1872?

A. I did not say he had two in one year; I said that Horrigan was employed to do the same as Mr. Scott done.

211 Q. Have you not said that Horrigan was on Yellow Bayou when you left there in the spring of 1872?

A. I don't remember saying that I said he was there some time in 1872. What time of his leaving I have forgotton; he was sick and did not remain so very long.

208 Q. Have you not said that he called to see you when you arrived at Bellevue, the fall of 1871?

A. I said he called to see us on our arrival at Bellevue.

209 Q. You have referred to the fact that Horrigan got sick. Did he get sick before or after you left there in the spring of 1872?

341 A. He had been sick when we got there, for he *he* said he could hardly walk over to Bellevue from Yellow Bayou.

210 Q. How long did Horrigan remain on Yellow Bayou after you left there in the spring of 1872?

A. I don't know.

211 Q. Did he remain there to make the crop of 1872?

A. He did not remain long; he was sick and left.

212 Q. After you left him on Yellow Bayou, in the spring of 1872, when did you next meet him?

A. I never saw him after that. His home was in Washington, D. C. My sister told me he died soon after, and I was in Arkansas when she said he died, and that was the reason why we never met.

213 Q. Did she say he died in Arkansas?

A. No, sir.

214 Q. Did she say where he died; and, if so, where?

342 A. It has passed out of my mind, the date and where.

215 Q. When you left Bellevue in the spring of 1872 and came to Philadelphia when did you next return to Bellevue?

A. In the fall of the year 1872.

216 Q. When you got to Bellevue in the fall of 1872 who did you find on Bellevue place in charge?

A. Capt. Smith.

217 Q. Who did you find on Yellow Bayou in charge?

A. I do not remember; after my mother died I never went there, but yet there was a man there, but have forgotten his name.

217 Q. Was the man there a manager or as mule-feeder, fence-builder, &c.?

A. He was there as the same as the others were and all the men hired for that purpose, as Capt. Smith could not attend to that part himself, he having to manage Bellevue and could not find the time.

343 218 Q. What were the other men there for?

A. Feeding the mules, putting up fences, fixing broken bars, and doing what carpentering was needed on Yellow Bayou.

219 Q. Had your father hired him?

A. I don't think my father hired the man.

220 Q. Who do you think hired him?

A. I think Capt. Scott hired this man.

221 Q. Why do you think Capt. Smith hired this man?

A. My father was not there; he was in Philadelphia.

222 Q. How long had your father been away?

A. I don't remember.

223 Q. Was your father there in the fall of 1872?

A. I don't remember that.

224 Q. Who managed to gather and ship the crop of 1872 from Yellow Bayou?

A. Capt. Smith shipped the crop, and I presume the man gathered it, as he was then under Capt. Smith's instructions.

344 225 Q. How do you know he was then under Capt. Smith's instructions?

A. When a man hires another I suppose they do as they are told.

226 Q. Have you not said that — knew Capt. Smith hired this man, then why would the man obey or be under his instruction?

A. I said I thought he hired this man, but upon reflection I know he did, for Capt. Smith said at the time he thought he was a good man.

227 Q. Is this the only circumstance which you have called to mind which makes you know that Capt. Smith hired the man?

A. I want to say, upon reflection, that this man's name was White.

228 Q. How was this White recalled to your memory?

A. By thinking over the matter during the absence of the notary.

The notary was called from his office for a short time—about ten minutes—and the counsel for both pl't'ff- and defendant was
345 present with the witness during his absence.

229 Q. Was there a crop made during the year 1872 on Bellevue place, and did your father assist in the management of making, gathering, and shipping the same?

A. Yes; there was a crop made, but my father had no management of it; Capt. Smith shipped the cotton; he always left the matter with Capt. Smith.

230 Q. When did you next leave there for Philadelphia?

A. Late in the spring months of 1873.

231 Q. Who did you leave there in charge of Bellevue and who in charge of Yellow Bayou?

A. Capt. Smith in charge of Bellevue; hired man in charge of Yellow Bayou, by my father and Capt. Smith.

232 Q. Was your father there?

A. Yes, at times. I never left my father there; when I left there he always came North with me.

346 233 Q. Did he come North with you in the spring of 1873?

A. He did.

234 Q. Had he been on Yellow Bayou during the winter of 1872 and the spring of 1873?

A. Yes.

235 Q. Who were the hired men left on Yellow Bayou when you left there in the spring of 1873?

A. I don't remember at that date, unless it was this man White; this man White was there some time between these years.

236 —. Was this man White left in charge of Yellow Bayou as manager, to make the crop of 1873, or was he left there as mule-feeder, fence-builder?

A. He was left there the same as the others, Scott and Horrigan.

237 Q. How were the others, Scott and Horrigan, left there, and for what purpose?

A. Attending and feeding the mules, fixing up the fences,
347 repairing broken levees.

238 Q. When did you next return to Bellevue?

A. We returned very late in the fall of the same, year, to wit, 1873.

239 Q. Who returned with you in 1873?

A. I forget.

240 Q. Did your father return with you?

A. I forget that, too.

241 Q. Did any gentleman attend you on your trip; if so, who?

A. No.

242 Q. When you got to Bellevue, in the fall of 1873, who did you find in charge there?

A. Captain Smith.

243 Q. Had he made a crop of cotton on Bellevue in 1873?

A. He did.

244 Q. Did he manage, in making the crop of 1873, gathering and shipping the *the* same?

A. He did.

245 Q. What assistance or part did your father take in the
348 labor of making — gathering the Bellevue crop of 1873?

A. No assistance; he never rendered any assistance.

246 —. Did Capt. Smith attend to it all?

A. He did.

247 Q. When you arrived at Bellevue, in the fall of 1873, who was in charge as manager of Yellow Bayou?

A. I don't remember.

248 Q. Was anybody in charge of it?

A. Yes; there was some one there, but I have forgotten the man's name.

249 Q. How do you know there was any one there?

A. By hearing my husband talk about the different matters concerning the place.

250 question. What did your husband say about it?

A. He would talk of placing mule feed there, and supplies to run the house for whoever was there—I mean hired men.

349 251 —. Do — recollect the talk as occurring in the fall of 1873?

A. I don't recollect it occurring in 1873, but he talked of it to me very often.

252 Q. Very often when?

A. When the supplies would run out on Yellow Bayou.

253 Q. Had the supplies run — at all — the fall of 1873, when you got there?

A. I don't remember.

254 Q. Then can you state that any one was on Yellow Bayou as manager in the fall of 1873?

A. Yes; there was some one there, but I don't remember that it was Mr. White or not.

255 Q. Was there — crop made on Yellow Bayou in 1873?

A. Yes; Capt. Smith shipped the cotton.

256 Q. Was your father at Yellow Bayou during the fall of 1873?

A. He was there in the winter months.

257 Q. Did he superintend and manage the gathering of the crop of 1873?

350 A. I don't know, because I never asked him questions about that; yet there was a crop made there, for I saw the negroes hauling the cotton bales through to Bellevue Landing for Yellow Bayou.

258 Q. Hauling whose cotton to Bellevue?

A. The cotton hauling from Yellow Bayou belonging to Wm. H. Todd.

259 Q. What did they do with the cotton?

A. Capt. Smith shipped it to various parties, and mostly to the account of W. H. Todd, according to my father's direction.

260 Q. How do you know this?

A. Hearing my father tell my husband to ship it, and who to.

261 Q. Who did he tell him to ship it to?

A. To people my father owed money to.

262 Q. Did he name the people? If so, give their names.

A. To so many different ones I have forgotten the parties he shipped to.

351 263 Q. Did you leave Bellevue in the spring of 1874 and come to Philadelphia; if yea, about what time?

A. My father and I came to Philadelphia in June 1874, after which he was taken very sick.

264 Q. Who else was in company with you and your father?

A. My sister, Mrs. Bowles, and Mr. Kirk, he having gone down there before this.

265 Q. Who did W. H. Todd leave in charge of Yellow Bayou when he left there in June, 1874?

A. A man by name of Simmons, who built Yellow Bayou gin; there being no gin on Yellow Bayou, the Yellow Bayou cotton was ginned at the Bellevue gin.

266 Q. When did Simmons build the Yellow Bayou gin?

A. That summer, in 1874; my father was then very sick.

267 Q. When did you return to Bellevue?

A. Some time in the fall of 1874.

352 268 Q. Who did you find in charge of Bellevue when you returned?

A. Capt. Smith.

269 Q. Did he make a crop, gather it, and ship it in 1874? If yea, state what assistance your father rendered in the same.

A. There was some crop made there; not much, on account of the big overflows. He received no assistance from my father and managed it himself.

270 Q. Who did you find on Yellow Bayou, as manager in charge, in the fall of 1874?

A. A man hired there, by the name of Mr. Kirk, at fifty dollars per month.

271 Q. How long had he been there when you got there, in the fall of 1874?

A. He went ahead of me some while and he assisted me in Phil-

adelphia for about two months to take care of my father; after that he went to Arkansas of the same year of 1874.

353 272 Q. When you got there was Kirk stopping at Bellevue or Yellow Bayou?

A. At Yellow Bayou.

273 Q. How do you know Kirk was hired by the month at fifty dollars per month?

A. I was present when the arrangement was made in Philadelphia in his dining-room at his residence—I mean W. H. Todd's house, No. 1809 Montgomery Ave.

274 Q. How long was Kirk to remain at fifty dollars per month and what was he to do?

A. To remain as long as he suited; he was hired as a carpenter, to attend mules, fix the fences, to look after the levees, and various other jobs.

275 Q. Was there any change made in that contract with Kirk, and did he assume other duties in the winter or spring of 1875?

A. As to a change in the contract I never heard, and as to
354 his assuming other duties I would have known it, for my father always talked his business affairs over with me; Capt. Smith shipped the cotton of that year—1874.

276 Q. You say your father always talked to you about his business affairs; did you learn from him that Kirk was hired only by the month to do carpenter's work, feed mules, fix fences, &c.?

A. My father always talked his business affairs over with me, and and that is how I know so much about his business affairs. I was present when the contract was made with Kirk; he was hired by the month, at fifty dollars, to feed the mules, fix up his levees, and do carpenter's work, &c., and whatever he was called upon to do.

277 Q. If you recollect distinct and positive on this, and if you was to see Kirk's statement to the contrary, would your mind be refreshed by it?

355 A. I was present when my father made the arrangement with Kirk, before he went down there first, and if any other contract to the contrary was made I have no knowledge — it.

278 Q. Was this contract which you are speaking of made in the summer of 1874, after Kirk had made his first trip to and from Arkansas?

A. It was made before he went down first. He came in from the country to see my father on this business; if any other contract was made when he went down the second time I have no knowledge of it.

279 Q. When was it when Kirk and your father made the contract in the dining-room on Montgomery Ave.?

A. It was before he went down the first time; the time of the year I don't remember.

280 Q. Do you remember what year it was?

A. No, not exactly.

356 281 Q. How long did Mr. Kirk remain in Arkansas?

A. He was there in 1874 and some of 1875.

282 Q. Was he there in 1873?

A. I don't remember that exactly.

283 Q. Was he there in the spring of 1874?

A. Yes.

284 Q. Now, do you mean to say that the contract referred to was made prior to the time he was there in the spring of 1874?

A. Yes; it was.

285 Q. State, if you know, what Kirk engaged to do when he went back to Arkansas in the fall of 1874.

A. I never knew of any other arrangement, except what was stated in my other answer to question No. 273.

285½ Q. Who was manager on Yellow Bayou plantation from January or February, 1875, to January, 1876?

A. Mr. Kirk was there some time in 1875, but left—the exact time I don't remember.

357 286 Q. Do you know that Kirk left there before January, 1876?

A. Yes; he left some time in 1875, because my sister refused to marry him—I mean Mrs. Bowles.

287 Q. What time in 1875 did he leave there?

A. I cannot remember.

288 Q. What was Kirk's business, during the year 1875, on Yellow Bayou?

A. While he remained there he attended to various duties—while he remained there.

289 Q. What was he hired to do?

A. Carpenter's work, feeding mules, fixing up levees, and other jobs.

290 Q. Was he hired to stay the whole year of 1875?

A. I don't know; all I heard was I know he was hired by the month.

291 Q. Who did you hear it from?

A. I was present when the arrangements was made, before he went South first to get fifty dollars per month from my father for what he was hired to do on Yellow Bayou.

358 292 Q. Was that all you know about his engagement in 1875?

A. As to the 1875 engagement, if any, I never knew of any difference from what was made when he went down first.

293 Q. Did Mr. Kirk make and gather the Yellow Bayou crop of 1875?

A. I don't know; I made no enquiries, because he did not stay the whole year.

294 Q. Were you at Bellevue when Kirk left Yellow Bayou in 1875?

A. I was; so was my father; and my husband gave him *him* the funds to leave.

295 Q. Why did your husband give him the funds to leave in 1875?

A. My father did not have *have* the money, and asked my husband to loan it to him—or rather through me; he asked me to ask my husband for it, and I told Captain, and he went over to

359 Yellow Bayou and gave it to my father, and my father gave it to Mr. Kirk.

296 Q. How much money was it?

A. I think it was two hundred dollars.

296½ —. Did your father owe it to Kirk for wages?

A. He did, because Mr. Kirk had no money of his own, my father said.

297 Q. Was that all your father owed him?

A. No; my father owed him *him* some more.

298 Q. Did he ever pay him?

A. He was unable to pay him all, for his crop was so small on Yellow Bayou.

299 Q. Was Kirk subject to anybody's control except your father's while he was on Yellow Bayou during the year 1875. Did he, Kirk, manage and control the making and shipping of the crops of Yellow Bayou of 1875?

A. Yes; he was under the control of Capt. Smith; he never shipped any cotton—I mean Kirk never shipped any cotton.

360 300 Q. What did Kirk do with the cotton he had ginned out on Yellow Bayou?

A. I don't know that he ginned any cotton, for he left before the time for ginning.

301 Q. Who took charge of Yellow Bayou when Kirk left?

A. My father was there then until the spring of 1876, the next year.

302 Q. Who took charge in the spring of 1876 and who did your father have there in the spring of 1876?

A. I think Mole came from Philadelphia.

303 Q. Did your father place Mole in charge and leave him there to manage for the crop of 1876?

A. He hired him by the month, at fifty dollars per month, to carpenter, feed the mules, and to do whatever was required on the place; this my father told me upon asking him in my house at Bellevue.

361 304 Q. When did your father tell you that?

A. Shortly after Mole's arrival.

305 Q. Did you remain at Bellevue during the summer of 1876?

A. No.

306 Q. What time in the spring did you leave Bellevue, and where did you go?

A. I don't remember the date of the year. I went to Philadelphia.

307 Q. Did you leave Edwin Mole on Yellow Bayou plantation, and was he there the next fall when you returned?

A. Yes.

308 Q. What was Edwin Mole's business on Yellow Bayou plantation during the spring, summer, and fall of 1876?

A. He was a carpenter, fed mules, fixed fences, &c.

309 Q. Who had hired him for that purpose?

A. My father.

310 Q. What did Mr. Mole do with the cotton which he had
362 ginned out on Yellow Bayou while he was there?

A. Turned it over to Capt. Smith.

311 X Q. During the year 1876 were your father and Capt. Smith on friendly terms all the time?

A. Yes; the very best, and all other years.

312 Q. Can you recollect no time at which your father had lost confidence in Capt. Smith and refused to allow him to have anything to do with his, your father's, business?

A. Never at any time.

313 Q. Were they on the best of terms continuously during the entire period of their partnership on Bellevue?

A. They were.

314 Q. Who managed to make the crop of 1877 on Yellow Bayou?

A. I do not know.

315 Q. When did Mr. Mole leave Yellow Bayou?

A. In the fall of 1877, early.

316 Q. Who took his place on Yellow Bayou when he left?

A. Capt. Smith.

363 317 Q. Did Capt. Smith gather the crop of 1877 in person or was there some local manager on the place who did it?

A. I don't remember.

318 Q. Who managed to make the crop of 1878 on Yellow Bayou?

A. There was a man there by name of Charlin Moran.

318 Q. Was your father there any portion of the time?

A. I think not.

320 Q. When was the last time your father visited Yellow Bayou?

A. He left in the spring of 1877, and never went back any more that I remember.

321 Q. When he left the last time did he leave Mole in charge?

A. He did.

322 Q. What did Charlin Moran do with the crop of 1878?

A. Turned it over to Capt. Smith, and he, Capt. Smith, shipped it.

323 Q. Were the same mul-s used to make the crop of 1877 and 1878 that were used on Yellow Bayou plantation prior to that
364 time—I mean did your father buy a new set of mules in 1877?

A. I do not know.

324 Q. In your answer to question No. 26 you say that Capt. Smith never did receive any money for his services. How do you know this?

A. I know he did not. My father had not the money to pay.

325 Q. Is this all the means of knowledge you have?

A. My father said he was unable to pay him.

326 Q. When did your father say that?

A. At different times.

327 —. At different times in what year or years?

A. I don't recollect.

328 Q. Was it prior to 1869?

A. No.

329 Q. Was it prior to 1870?
A. It is too far back to remember exactly.
330 Q. It is too far back to remember generally?
A. Yes.
331 Q. In answer to question No. "27" you say that your
365 father never paid Capt. Smith for his services "in" anything. How do you know this?
A. He was unable to pay him.
332 Q. Is this all your means of knowledge on the subject?
A. My father said he did not have it.
333 Q. Did not have what?
A. Money.
334 Q. When did your father say that?
A. At different times; I don't remember at what times.
335 Q. In your answer to question No. "28" you said there never was any written agreement, to my knowledge; if there was I would have known it. How would you have known it?
A. They both would have told me of it, both Capt. Smith and my father, as they talked their affairs over before me.
336 Q. Did they take you into their confidence and tell you all their business transactions?
A. When we three were present they would talk over mat-
366 ters before me, as I never knew of any secret in the matter.
337 Q. Would it have been a secret if you had known it?
A. I can't answer it; I don't understand it.
338 Q. Please state what you heard them say, as near as you can recollect.
A. I can't remember precisely.
339 Q. Is this as near as you can state you recollect of what they said?

(Counsel for defendant Smith objects to the course of cross-examination.)

A. I remember having heard my father say to Capt. Smith where to ship Yellow Bayou cotton at different times.
339 Q. Please state what you heard them say, as near as you can recollect.
A. I have already answered this question in my answer to question No. "339."
340 Q. Is this all you recollect having heard them say on the subject of services?
367 A. Yes; this is all I recollect now.
341 Q. Did your father have a severe spell of sickness in 1874, in the city of Philadelphia?
A. He did.
342 Q. Was Mrs. Mole, your sister, in the city of Philadelphia during said illness?
A. She was.
343 Q. Did you see her during said illness?
A. I did not; she never called to his house to see him while he was sick.

344 Q. Was you in the house all the time during his illness?

A. I was; I never left his house until he got better.

345 Q. Did you sleep during this time?

A. Not very much.

346 Q. Would it have been possible for Mr. Mole to have visited your father during said illness without your knowledge?

A. I would have heard of it; the children were indignant
368 about it, as the rest all called but her to see him.

347 Q. Were you in Philadelphia in the month of November, 1882?

A. I was.

348 Q. Were you in Philadelphia all of the month of November, 1882?

A. I was.

349 Q. Was there any talk between you and your brother and sister about that time in reference to this suit?

A. Yes.

350 Q. What was the talk?

A. About the suit.

351 Q. What did you talk about the suit?

A. I don't remember all the words; I remember that Mrs. Mole said that Mr. Mole and Gen. Reynolds were carrying on a correspondence; she said that Mr. Mole said that General Reynolds wanted him to find out what the heirs knew in this suit, and that Mole send for my brother Richard to go over there to see him about
369 what he knew, and he refused to go, as my brother Richard did not like Mr. Mole; that is part of the conversation that I remember; Mr. Mole told me at my residence, 865 Corinthian Ave., Philadelphia; she gave me General Reynolds' letter, which is filed in this case and marked Exhibit "Z," and she said there was more, worse than this—I mean more letters.

352 Q. Do you remember of seeing your brother, Derringer Todd, on or about the twenty-first of November, 1882?

353 Q. Did you and he talk about the case at those meetings?

A. I saw him some time during the month and a good many times.

A. We did. He would tell me what Mole told him when he called to see them where they lived.

354 X Q. What you tell him in return?

A. I told him, in answer to his saying that Mole hated
370 Capt. Smith so much, that he was bitter to him. I don't know what — Captain has ever done to Mr. Mole to cause such bitterness; and Mrs. Mole told me that her husband was so bitter against Captain Smith that his heart was black, and wanted me to see him to convince me of the fact. This was said at my residence last fall.

355 X Q. Did Derringer Todd tell you, or did you know, that he had written a letter to General Reynolds on the subject of evidence in this case?

A. Yes; he came to me and told me what he had done right away, and then said he was sorry to have written it, and he wrote and recalled it right away, as he was mislead. He also gave me a

copy of the letter recalling all he said, and, if necessary, he said he would make an affidavit, but I said it was not necessary.

371 356 Q. Have you got a copy of the letter of withdrawal which he gave you?

A. I have.

357 X Q. What does the letter of withdrawal state?

A. I will file it — a part of my deposition in this case (marked Exhibit Z No. 2).

358 X Q. What was the cause of his withdrawal; did he get any information, advice, or compensation from you which caused him to withdraw; if so, what?

A. He never did get anything from me.

359 X Q. Did he get no information from you?

A. We talked the matter over, but I gave him no advice or information or compensation, nor did I try to change his mind, nor do I know he changed his mind.

360 Q. You speak, in your answer to question No. 354, of my residence, No. 865 Corinthian avenue; do you own that

372 residence?

A. No.

361 Q. Who owns it?

A. I forget his name.

362 X Q. Do you own any property in the city of Philadelphia?

A. Yes.

363 X Q. What property, and where is it located?

A. West Philadelphia.

364 X Q. On what street, and describe it?

A. It is on Story street; a house and lot.

365 Q. Did you acquire it as a part of your father's estate?

A. It was — deed of gift from my father to me.

366 —. When did he give it to you?

A. I do not remember the date or year; it was before I went to Arkansas; it was before 1868.

367 Q. Was it after or before you were married?

A. After I was married.

368 Q. Is the deed recorded in your name?

A. It is.

373 369 Q. Is that all the property you got by deed or gift from your father?

A. He deeded me land in Ohio as a gift.

370 Q. When?

A. I do not remember the date; it was before I went to Arkansas—that is, 1868. He told me that there was taxes due on it, and that if I paid the taxes he would deed it to me, and my husband paid them for me, as I had no money at that time.

371 Q. What county is that property in in Ohio?

A. I think it — Marion, but I am not sure of that.

372 Q. Do you still own that property?

A. I sold it.

373 Q. Who did you sell it to?

A. Some parties living out in the vicinity there; I don't remember their names.

374 Q. When did you sell it?

A. I sold parts of it at different times, but I forget dates.

374 Q. About how long — did you sell the last of it?

A. It was in 1881 or 1882.

376 Q. About what time did you sell the first of it?

A. I do not know.

377 Q. Is that all the property your father gave you?

A. That is all.

378 Q. Do you own or control any piece of property in the city of Philadelphia which your father owned or was interested in at the time of his death?

A. I have controlled some property situated in the rear of 1033 Sarah street, in this city, which has a heavy mortgage on — of twenty-seven hundred dollars. This property was given to Mr. Cooper for monies my father owed him. He, finding nothing in it to compensate him, at the request of the family to him he transferred it to me, as he could make nothing out of it for his own debt, to see if I could make anything out of it for the family; there has

375 nothing been made out of it but expenses.

379 Q. Who is Mr. Cooper and what relation does he bear to the Todd family?

A. No relation to the Todd family that I know of, except that he was a bosom friend of my father?

380 Q. Is he the same Cooper whom your father appointed executor of his will?

A. He is.

381 Q. What interest does the mortgage referred to bear?

A. Six per cent.

382 Q. What rent does the property pay?

A. I don't know the entire amount; some five dollars and several at seven dollars per month.

383 Q. How many houses is there in all?

A. I think there is five.

384 X Q. Who holds the mortgage on the property?

A. Richardson and Janney.

385 Q. Is the interest paid up?

376 A. It was paid to last November.

386 Q. Did Cooper make a deed of the property to you?

A. He made a transfer according to the request of the family.

387 Q. What claim did Cooper have on it?

A. My father owed him and gave him this property to secure him; not being enough to pay him, he done as requested—I mean there was nothing in it.

388 Q. Had your father made — deed or mortgage of it to Cooper?

A. I don't know.

389 Q. Is that all of the property which you controlled that belonged to your father's estate?

A. Yes, all that I control now.

390 Q. What property have you sold, other than what is mentioned above, which you got from your father's estate?

A. I never sold any from my father's estate, except what I sold in Ohio.

377 391 Q. You say, in answer to question No. "389," that is all I control now. Have you controlled at any other time any other property; if so, what?

A. There was property situated at Marlborough and Savery streets, in Philadelphia, which had a first and second mortgage on it, and it was foreclosed on the second mortgage.

392 Q. Who bought it at that foreclosure sale?

A. A man named Spiese.

393 Q. Did you receive anything from that property?

A. I never received any rents; but when the property was sold Mr. Byrne, of 514 Walnut street, gave me three hundred and fifty dollars for to give up the property to Mrs. Spiese, as he said he pitied the children for losing the property, and I divided the means among all the children. He said this was merely an act of kindness on his part—I mean the part of the purchaser, Mr. Spiese.

378 396 Q. Did you and the children make a quitclaim deed to the property?

A. It was foreclosed under the second mortgage.

395 Q. Did all this take place after your father's death?

A. It did.

396 Q. About what year?

A. I think it was in 1880 or near to it.

397 Q. Your father, in his will, a copy of which is filed as Exhibit "O" and attached to this deposition, charges you with forty-five hundred dollars heretofore advanced to you by him. Please state how that advance was made.

A. My father never gave in money five dollars, nor in anything else, except the property in Ohio and West Philadelphia, and that was a deed of gift; but, on the contrary, I have loaned him money frequently, when he never paid me back.

379 398 Q. Were you present when your father made his will?

A. Not this will.

399 Q. Did he make any other will, and were you present at the making of the same?

A. He made one in 1874, on his sick bed. I was present.

400 Q. Did your father ever let you know that he had made this will?

A. I forget.

401 Q. Did your father ever tell you that the four thousand five hundred dollars with which you were charged in his will was a credit which he had given Capt. Smith on the purchase-money of the half of Bellevue which Smith had bought from him for twenty thousand dollars?

A. No; he never told me such a thing in his life, and it is the first time I ever heard this mentioned.

402 Q. Did you ever know until to-day that your father

380 had charged you with forty-five hundred dollars in his will?
A. I heard the executor read it—Mr. Cooper.

403 Q. Did Mr. Cooper, the executor, ever visit Arkansas and investigate the property there?

A. I don't know.

405 Q. I file a letter dated October 24th, 1875, at Philadelphia, and a letter — Philadelphia, June 20th, 1877, and marked Exhibits "Z" No. 4 and "Z" No. 5, and attach them to this deposition as part of the same. Please state if they are in your father's handwriting.

A. If they were compared with other letters in my possession of my father's then I would be able to see if they were genuine; they look something like his handwriting.

406 Q. Are they in his handwriting?

—. ——.

Cross-examination:

Re-direct examination by Major J. F. ROBINSON:

407 Q. Please state what you mean by your answer to question No. "338?"

381 A. I could not remember the precise words my father said when he spoke on business matters, except shipping the cotton. In answer to the matter, the agreement about services, I never knew of any written contract.

408 Q. Cross-interrogatory No. 338 is as follows: Please state what you heard them say, as near as you can recollect? and your answer is: I can't remember precisely. What subject of conversation do you refer to?

A. It was where he speaks about the written agreement, and as I never had any knowledge of a written agreement —.

409 Q. Did you ever hear a conversation about a written or verbal agreement between them in regard to services?

A. I never heard — between them.

410 Q. Did you ever hear a conversation between them about Capt. Smith's services in superintending Bellevue and Yellow Bayou?

382 A. I don't recollect exactly a conversation; my father told me often that he owed him, Capt. Smith, for services rendered in the South, and felt mortified that he could not pay him.

411 Q. Can you file with your deposition the original deed of the Story-street property referred to in your answer to cross-interrogatory No. 364; if so, please file it.

A. I can, and file it, and it is marked Exhibit Q, and I attach it to my deposition as part of the same.

412 Q. If you can, please file the original deed — the land in Ohio, referred to in your answer to cross-interrogatory No. "369?"

A. I can, and I file the same and attach it to *the* my deposition as part of the same and mark it Exhibit Q No. 2.

413 Q. Did you take control of any property of your father's estate, other than what you have referred to, since your father's death?

383 A. No real estate; the furniture referred to in the paper which I will file as part of the deposition, and attach the same thereto and mark it Exhibit Q No. "3," is all I ever received.

414 Q. Did you pay the five hundred and thirty-five dollars mentioned in the bill of sale marked Exhibit Q No. 3; and, if so, how and whose funds did you pay it out of?

A. My funds. I paid it in cash.

415 Q. Did you have any money or property of your own (outside of what you received from your father in real estate), and from what source was it derived?

A. Yes; from my mother's estate.

416 Q. At the time the papers executed by your father, dated May 15th, 1878, filed herein and marked Exhibit Q No. "3," was executed was your father in debt beyond his ability to pay?

A. He was in debt.

417 Q. Were there judgements *againts* him at any time?

A. I don't know.

418 Q. Was it a lumping trade by which you bought out,
384 or purported to buy out, all the property your father had at that time subject to execution?

A. I loaned my father this money in cash, and he gave me the furniture for this money that belon-d to him—I mean the furniture belonged to him—as I had some there too, mentioned in the bill of sale. After his death I gave the furniture to the children to sell. They sold it and divided the money between them.

419 Q. Did you loan him money at the time he gave you the bill of sale mentioned?

A. I had loaned him three hundred dollars a little while before—it was a little over three hundred dollars—in the same year, and the rest when the bill of sale was made out.

420 Q. Was the paper marked Q No. 3 a bill of sale or a mortgage to secure your loan?

A. A bill of sale for cash loaned to him. I paid some at the time that the bill of sale was made out.

385 421 Q. Did you, after your father's death, give the furniture to the children in compliance with any understanding between you and your father before his death?

A. There never was any understanding of that kind between my father and myself; it was an act of kindness of mine.

422 Q. Referring back to cross-interrogatory No. "338," I now ask you do you know of any agreement or contract, written or unwritten, between your father and Capt. Smith in reference to Captain Smith's services on Yellow Bayou and Bellevue plantation-?

A. I never knew of a written contract. My father told me he owed Capt. Smith for services rendered in the South on Yellow Bayou and Bellevue, and was mortified that he could not pay him.

423 X Q. Please state what you heard him say, as near as you can recollect.

386 A. He said he owed him for services and was mortified because he could not pay him. This conversation took place in 1874 after a severe spell of sickness,— which my father died.

424 Q. Did he use the word embarrassed in that conversation?
A. I don't remember to have heard him.
425 Q. Did he use the word circumstances in that conversation?
A. I don't remember.
426 Q. Did he use the word could in that conversation?
A. Yes; he said he could not pay him.
427 Q. Was Capt. Smith present?
A. He was not.
— X Q. At the time of the execution of Exhibits Q No. 1 and Q No. 2 was your father embarrassed until death?
A. He was not.
428 X Q. Have you ever reimbursed or been called upon to reimburse your father's estate for the four thousand and five hun-
387 dred dollars with which your father charged you in his will?
A. No.

JOSEPHINE V. SMITH.

Sworn and subscribed before me this 13th day of June, A. D. 1883.

[SEAL.] JAMES CROWE,
Notary Public.

JOSEPHINE V. SMITH.

388 *Deposition of Richard H. Todd.*

1 Q. What is your name, age, and residence?
A. Richard H. Todd; aged 33 years; I reside at No. 1033 Sarah street, Kensington.
2 Q. What was your father's name, and where did he reside?
A. William H. Todd; lived at Montgomery avenue and Gratz street.
3 Q. Is he living or dead?
A. He is dead.
4 Q. When did he die?
A. In May, 1879.
5 Q. Did he own any property in the State of Arkansas?
A. No; I think it was sold.
6 Q. What property do you refer to that was sold?
A. Yellow Bayou plantation; I don't know exactly when the other property was sold.
7 Q. What other property do you refer to?
A. Bellevue plantation and the lands in Monroe, Crittenden, and Phillips counties, which were sold for taxes.
8 Q. Did your father own all of Bellevue?
389 A. No, sir.
9 Q. Who, if any one, owned any interest in it besides him?
A. Capt. B. H. Smith.
10 Q. What interest did Capt. Smith own in Bellevue?
A. One-half.
11 Q. State as near as you can when he acquired the half interest in Bellevue—I mean Capt. Smith.

A. I think about 1868; that is about the time.

12 Q. Who did Capt Smith buy the half interest from?

A. Wm. H. Todd.

13 Q. Who has managed the plantation from the time Capt. Smith bought the half interest up to the present time?

A. Capt. B. H. Smith.

14 Q. Do you know who has managed the Yellow Bayou plantation since 1868?

A. Capt. B. H. Smith.

15 Q. Have there been any other managers on Yellow Bayou while Capt. Smith managed it?

A. There have been men under him.

16 Q. Give their names as far as you know them, and the
390 years they were there, if you remember.

A. Mr. Kirk was there in 1873 or 1874; I won't be positive about the year; Mr. Mole was there about 1875 or 1876. Previous to Mr. Kirk there was Mr. Simmons; I don't remember the year; then there was a Mr. Scott in 1870; I think there was another, but I can't think of the name.

17 Q. Were you in Arkansas on either of the above plantations at any time? And, if so, please state when.

A. I was on Yellow Bayou in the fall of 1868.

18 Q. Who was managing Yellow Bayou plantation when you were there in 1868?

A. Capt. B. H. Smith.

19 Q. Do you know who owns Yellow Bayou now?

A. Yes, sir; Capt. B. Smith—I beg pardon, I meant Mr. Halliday; I thought you were speaking of Bellevue.

20 Q. Do you know what year Mr. Halliday got Yellow Bayou?

A. About 1878.

21 Q. Do you know whether Capt. Smith received or was to receive any compensation from your father for his services for managing Yellow Bayou and Bellevue plantations?

391 A. I never knew him to receive anything; he was to receive compensation.

22 Q. State how you knew he was to receive compensation?

A. By my father's own word of mouth to me.

23 Q. Please state what he said about the matter.

A. He said at different conversations that he was entitled to compensation for his services, and that it was impossible for him to get along without his services in managing these plantations; that he could not trust any of these men that he had down there to ship any cotton, as they would take their money that he owed them, and Capt. Smith would not —, as he could not spare it at that time.

24 Q. Did you ever hear your father say he did not owe Capt. Smith for his services?

Ans. No, sir.

25 Q. Did you ever hear Mrs. Capt. Smith, your sister, tell your father that Capt. Smith was going to charge him eight thousand dollars for services at his death, and did your father say in response: "I don't consider I owe one dollars?"

A. I did not hear Mrs. Smith tell my father that; I did not hear my father say so.

392 26 Q. Did your father have a severe spell of sickness in 1874?

A. He did.

27 Q. Who nursed and waited on him?

A. I did for one; Mrs. Smith and Mrs. Harrigan, now Mrs. Bowles; & also Mr. Kirk.

28 Q. Did your sister, Mrs. Mole, remain a portion of the time in the house with him, and did she visit him up to the time of his recovery?

A. I don't remember seeing here there.

29 Q. Did you ever see about your father's house in Philadelphia, in 1877 or 1878, or at any other time, any book of accounts of the Yellow Bayou plantation?

A. I did not.

30 Q. Who had charge of the Bellevue plantation when you were down there in 1868?

A. I don't remember that.

31 —. Do you know of any arrangement between your father and Capt. Smith in reference to eight thousand dollars for which Smith sued for and attached the crops and personal property on Yellow Bayou in August, 1876?

A. No; I don't know.

32 Q. Do you know whether that claim and judgement was arranged between Capt. Smith and your father against his creditors?

393 A. I don't know of any such arrangement.

33 Q. Do you know of any arrangement made by your father with Capt. Smith to protect his children and himself against his debts and liabilities?

A. I do not.

34 Q. State if your father left any property outside of Arkansas.

A. He left property, but it was fully encumbered, insured for its full value—I mean it was encumbered.

Cross-examination of Mr. RICHARD H. TODD by Mr. WADDELL:

1 X Q. Do you own the property No. 1033 Sarah street, Kensington?

A. I do not.

2 X Q. Do you pay rent for it?

A. I do.

3 X Q. To whom do you pay rent?

A. Mrs. B. H. Smith.

4 X Q. How much per month do you pay?

A. Well, I pay five dollars.

5 X Q. Are you in arrears or behind with your rent?

A. It is paid up to the first day of June.

6 X Q. Is any rent due your sister at this time?

A. None due until the first of July.

394 7 X Q. Did Wm. H. Todd, your father, own that property at the time of his death?

A. No, he did not.

8 X Q. From whom did your sister get it?

A. James W. Cooper.

9 X Q. Before or after your father's death?

A. After my father's death, but I won't be positive.

10 X Q. Was he your father's executor?

A. He was supposed to be in the will, but never acted to my knowledge.

11 X Q. Did James W. Cooper sell the property to your sister?

A. No, he did not sell it to her; he gave it to her; he did not want it, as it was encumbered for more than it was worth, and the house in a very bad condition.

12 X Q. What houses?

A. No. 1033 Sarah street, and No. 1, in the rear.

13 X Q. Are *they* only two houses in the rear that Mr. Cooper gave to your sister?

A. No, sir; there is more.

14 X Q. How many more?

A. There are four more—six in all.

15 X Q. Do they all rent for five dollars per month each.

A. No, not all five; some for five, some for seven, and one for eight dollars.

16 X Q. Give the number of the houses referred to. How
395 many of them rent for five dollars; how many of them rent for seven dollars, and how many of them rent for eight dollars per month?

A. No. three, in the rear, for five dollars; number four, in the rear, for five dollars, and number five, in the rear, for five dollars; number one, in rear, and number two, in rear, rent for seven dollars each, and No. 1033 Sarah street rents for eight dollars per month.

17 X Q. Who owned that property at the time of your father's death.

A. Mr. Cooper, I believe.

18 X Did your father ever own it?

A. He did.

19 X Q. Who encumbered it with the mortgage?

A. Wm. H. Todd.

20 X Q. To whom did Wm. H. Todd convey it before he died?

A. I don't know.

21 X Q. Do you state that the estate of Wm. H. Todd had no interest in said property?

A. I don't know anything further than I have stated.

23 X Q. Does your sister, Mrs. B. H. Smith, receive the rents from all of said houses?

A. She does.

396 24 X Q. Who is her agent for the collections of her rents?

A. Mr. Gayley, who lives at 1909 Pine St.

25 X Q. Is your sister, Mrs. B. H. Smith, in possession of any other

property in the city of Philadelphia, which your father owned before or at the time of his death?

A. Not that I know of.

26 X Q. What property do you refer to in your answer to question No. 6, which was sold?

A. It was the Southern property.

27 X Q. What Southern property?

A. Yellow Bayou.

28 X Q. How do you know it was sold?

A. My father told me so.

29 X Q. When did he tell you so?

A. About 1878.

30 X Q. Is that all the property he told you was sold?

A. That was all at that time.

31 X Q. What property did he tell you was sold at any other time?

A. His lands for taxes in those counties which I have previously spoken of Crittenden, Phillips, and Monroe counties, as near as I can tell.

32 X Q. Is this all the property he told you was sold in the South?

397 A. It was.

33 X Q. Did he ever tell you in any other conversation that any other part of his Southern property had been sold?

A. No, sir.

34 X Q. Who has managed the Bellevue plantation from the time Capt. Smith bought the half interest in it up to the present time?

A. Capt. B. H. Smith.

35 X Q. Did your father, Wm. H. Todd, have or exercise any control in the management of the Bellevue plantation and the crops produced on it from the time he sold the half interest to Capt. Smith up to the present time?

A. He did not.

36 X Q. Do I understand you to say he had no interest in it?

A. I did not say so.

37 X Q. What did you say?

A. As I said before, I said Capt. Smith managed it and control-ed it.

38 X Q. What do you mean by the word "it," in your former answer?

A. I mean the products of the plantation.

39 X Q. How do you know Wm. H. Todd exercised no control over Bellevue and its crops af- B. H. Smith purchased the

398 half interest?

A. He told me so on several occasions.

40 X Q. Who told you so?

A. My father. He told me so on several occasions.

42 X Q. When did he tell you so?

A. About 1874 or 1875.

43 X Q. At any other time did he tell you so?

A. Yes; but I cannot remember the years.

44 X Q. How do you know he told you afterwards and you can't tell the years?

A. Because I remember these years I have named, in speaking of his Southern business at that time.

45 X Q. Did he tell you so after 1875?

A. He did.

46 X Q. How long after 1875?

A. About two years.

47 X Q. Do you mean about 1877?

A. About that time.

48 X Q. Did he ever tell you about it after 1877?

A. I don't remember.

49 X Q. Have you any personal knowledge of what you have stated as to Capt. Smith's management of Bellevue, or is it all hearsay?

A. I have knowledge of it and not hearsay.

399 50 X Q. State your personal knowledge of it.

A. Mill Creek, in 1875; we were conversing together in reference to his Southern plantations, and at that time he told me that Mr. B. H. Smith's services were invaluable, and that he could not get a man to fill his place.

51 X Q. Is that what you call your personal knowledge of the services of Capt. Smith in managing Bellevue plantation?

A. Not all of my personal knowledge.

52 X Q. Please state the balance of your personal knowledge on that subject.

A. He also told me in 1875, in the fall, and also in 1876, that he was in debt head over heels to Capt. Smith for services rendered.

53 X Q. Is that what you call you- personal knowledge?

—. No, sir.

54 X Q. Please state the balance of your personal knowledge.

A. About two years after that he repeated what I formerly have said, and other things that I can't remember.

55 X Q. How do you know that he repeated other things that you can't remember?

400 A. Because I do not remember; I know the occasion, that is all, being connected with him in the Mill Creek business.

56 X Q. You know the occasion of what?

A. In wanting money to pay off his hands for work done.

57 X Q. To pay off his hands for work done where?

A. At Mill Creek.

58 X Q. Have there been any other managers on Yellow Bayou except Capt. Smith since 1868?

A. There was not.

59 X Q. Was there any other persons engaged in business on Yellow Bayou from 1868 to 1879? (J. C., N. P.)

A. Yes.

60 X Q. Who were they and what were their business?

A. Wm. H. Todd; I don't know of any other business.

61 X Q. What did Wm. H. Todd do on Yellow Bayou?
A. Cotton planter.
62 X Q. Was he there continually from 1868 to 1879?
A. He was not.
401 63 X Q. What part of the time was he there?
A. A portion of the winter season and not very long at that, as his disease would not allow him to remain long.
64 X Q. Do you state this as of your own personal knowledge?
A. I do.
65 X Q. Were you present on Yellow Bayou continuously from 1868 to 1879?
A. I was not.
66 X Q. What part of the time were you there in person?
A. In 1868, part of 1869, 1870, and a portion of 1871.
67 X Q. Were you there continuously from the beginning of 1868 to the end of 1871? If not, state what part or parts of the time you were there.
—. I was not there continuously to the end of the year 1871. I went to Yellow Bayou in the fall of 1868 and remained until the following spring. I do not remember the time of the year in 1869 I went down, but was there in the fall of 1870, and came away in January, 1871.
68 X Q. Who made the crop on Yellow Bayou in 1868?
A. Capt. B. H. Smith.
402 69 X Q. Did Wm. H. Todd have any interest or take any part in the making of that crop?
A. He had an interest and B. H. Smith planted the crop.
70 X Q. What interest did Todd have?
A. His own interest, as far as I know; not any further.
71 X Q. What was his own interest?
A. Yellow Bayou plantation.
72 X Q. Did he have any interest in the crop of Yellow Bayou plantation in 1868?
A. He did.
73 X Q. What interest?
A. The whole bussiness, as far as I know.
74 X Q. Did Capt. Smith have interest in the crop of 1868; if so, what?
A. No.
75 X Q. Who made the crop of 1869 on Yellow Bayou?
A. Capt. B. H. Smith.
76 X Q. What interest did your father have in that crop?
A. Full interest.
77 X Q. What interest did Capt. Smith have in it?
A. I don't know, unless for his services.
78 X Q. How do you know that your father had the entire interest in the Yellow Bayou crops of 1868 & 1869 and that Capt.
403 Smith had no interest in them?
A. I have always understood it so from his conversation—spoke of no interest that Capt. Smith had unless it was for services.
79 X Q. To what conversation do you refer?

A. From his talk between my father and mother.

79½ X Q. Talk between your father and mother when and where?

A. In the South, in 1870, on Yellow Bayou.

80 X Q. What did your father say in that conversation?

A. In speaking of how well he managed it up to that date; I mean Yellow Bayou.

81 X Q. What did he say?

A. He said he had managed the place elegantly.

82 X Q. Did he use the word "elegantly?"

A. He did, as near as I can remember.

83 X Q. Are you positive he used that word?

A. As near as I can remember, he did, but I am not positive.

84 X Q. Did he use any other words in that conversation?

A. He did, but I do not remember.

85 X Q. Other words that passed between them?

—. ——.

404 86 X Q. Then are these all the words you remember?

A. I don't remember hardly any except that word, and that a slight remembrance.

87 X Q. What do you mean by that word?

A. That he had managed it "elegantly."

88 X Q. Then, from the expression used by your father, "that he had managed it elegantly," did you conclude that Capt. Smith had no interest in the crops of Yellow Bayou for 1868 and 1869?

A. No, sir; not unless it was for services.

89 X Q. Did your father have confidence in Capt. Smith at that time?

A. He did, and always did up to the time of his death.

90 X Q. Did he entrust the shipping of the crops of 1868 and 1869 from Yellow Bayou, or did he go down in person to see to the shipping and sale of the crops?

A. He entrusted the shipping of the cotton to Capt. B. H. Smith.

91 X Q. Did he allow Capt. Smith to sell all or any part of said crops?

A. All of said crops. I never knew it different.

92 X Q. After you left Yellow Bayou, in January, 1871, did you ever return to Yellow Bayou?

A. I did not.

405 93 X Q. Who made the crops of 1870 and 1871 on Yellow Bayou?

A. Capt. B. H. Smith.

94 X Q. Where did Capt. Smith live during those years?

A. On Bellevue plantation.

95 X Q. How far is Bellevue from Yellow Bayou?

A. The residence of Capt. Smith is about a mile and a quarter from the residence of Yellow Bayou.

96 X Q. Who lived on Yellow Bayou during the years 1870 and 1871?

A. My father and mother during the winter season.

97 X Q. Who lived there the balance of the season?

A. I can't remember.

98 X Q. Did anybody live there while your father and mother were away?

A. There was some one, but I don't remember.

99 X Q. What was that "some one" that you don't remember there for?

A. To work around during the summer season, and subject to Capt. Smith's orders, and to take care of the personal property in the house.

100 X Q. Do you state this as of your own personal knowledge?

406 A. I do.

101 X Q. Were you present all the time?

A. I was present during the winter season, while my father and mother remained there, up till January, 1871, and they were still there.

102 Q. How old were you at that time?

A. I was twenty in 1870.

103 X Q. Have there been any other manager- on Yellow Bayou while Capt. Smith managed?

A. He had an assistant by the name of Kirk.

104 X Q. Is Mr. Kirk all?

A. No, sir.

105 X Q. State all the others.

A. There was — by the name- of Scott, Mole, Simmons; that is all.

106 Q. Were the persons above named on Yellow Bayou when you were there?

A. One; Scott was his name.

107 X Q. Where does Scott live now?

A. I do not know.

108 X Q 2. Did you see either of the other parties named on Yellow Bayou?

A. No, sir; none but Scott.

109 Q. Can you state, of your own personal knowledge, that either of the parties named were ever on Yellow Bayou?

A. Yes, sir.

110 X Q. State your personal knowledge.

407 A. From Mr. Mole and Mr. Kirk themselves; also their letters from Yellow Bayou plantation to Wm. H. Todd.

111 X Q. Can you state, or do you state, from your own personal knowledge that the parties named were under the control and orders of Capt. B. H. Smith?

A. I do state that they were under the management of Capt. B. H. Smith; my father told me so.

112 X Q. Do you know the fact, independent of what your father told you?

A. I do not, except what Mole said when he was speaking of it; outside of that I do not know.

113 X Q. When and where did your father tell you about it?

A. At Mill Creek, in 1875.

114 X Q. What did your father say about it?

A. He said Kirk thought hard of having Capt. Smith over him,

as he thought he could manage as well as he could; also Mole; but "Dick," he says, you know I can't trust no one to do my business like Capt. Smith.

115 X Q. What time in 1875 was this conversation?

408 A. In the fall, while he was building his mill.

116 X Q. In your answer to question "114" have you given the language your father used on that occasion?

A. I have.

117 X Q. Did he use the word or name "Dick" in that conversation and the name "Kirk" and the name "Mole" and the name "Capt. Smith?"

A. He did.

118 X Q. Do you know whether Capt. Smith received any compensation or was to receive from your father for his services for managing Yellow Bayou and Bellevue plantations?

A. I don't know whether he ever received any compensation, but he was to receive compensation.

119 X Q. How do you know he was to receive compensation?

A. From a conversation that my father had with me in 1875 and later.

120 X Q. State what the conversation was which your father had with you in 1875 and later.

A. He said, in 1875, at Mill Creek, when I asked him for money to pay off hands—he said he did not have it. I said, Can't

409 you draw some from the South? He said, No; as he was in debt; as he had not paid debts and other services to Capt. Smith, and said, I will have to take your children's rents to pay the men off.

121 X Q. Did your father use any other words?

A. Not that I can remember.

122 X Q. Did he use the word "debt?"

A. He did.

123 X Q. Did he speak of owing Mole and Kirk for their services?

A. He did.

124 X Q. When was the later conversation you had and referred to in your conversation?

A. Along 1876 and 1877.

125 X Q. What was the occasion of that conversation and where was it?

A. It was exactly the same I stated before.

126 X Q. Was it at the same place?

A. It was in 1876.

127 X Q. And was it under the same circumstances?

A. Pretty much; not altogether.

128 X Q. State the difference in the circumstances attending the two occasions.

A. It was in reference to interest money due by Wm. H. Todd; also of partly finishing up the mill, when he needed money.

410 129 X Q. Were the circumstances and conversations alike, except in this particular?

A. As near as I can remember, it amounted to the same thing.

130 X Q. Is your recollection of the conversation had in 1875 more or less distinct than the one in 1876?

A. Just about the same; I can remember a little more of 1875, because the money was needed then—right then.

131 X Q. Did your father, in the conversation which occurred in 1875, say anything about being able to trust his managers in the shipping of cotton from Yellow Bayou and Bellevue?

A. He did say he would not trust Mole or Kirk to ship or do his business, as they would take out what he owed them, and he could not spare it at that time, and Capt. Smith would not take it out.

132 X Q. Did your father ever promise to give Mole a mortgage to secure his wages on either of the crops which Mole produced on Yellow Bayou?

A. Not to my knowledge; I never heard of such a thing.

133 X Q. Did your father ever give Capt. Smith a mortgage on the crop of Yellow Bayou or Bellevue?

411 A. I believe he did.

134 X Q. Why do you believe he did?

A. As near as I can remember, in 1875 he said that he was considerably in debt, and intended or did secure him for his services, as he was perfectly embarrassed here.

135 X Q. When was this?

A. I do not exactly remember the year; I think it was about that time.

136 X Q. Did you see the mortgage?

A. I did not.

137 X Q. How did you know about it?

A. I heard my father speak of it.

138 X Q. What did he say about it?

A. That he had given Capt. Smith a mortgage for services rendered.

139 X Q. For services rendered when?

A. For managing Yellow Bayou and Bellevue plantations.

140 X —. Do you know anything about the attachment suit in favor of Capt. Smith against your father, and levied on the Yellow Bayou crop and mules in 1876?

A. I do not.

141 X Q. Did you never hear anything about it?

A. No, sir.

412 142 X Q. Did your father at any time from 1868 to the time of his death loose confidence in Capt. Smith and prevent him from handling the crops of Yellow Bayou and Bellevue plantations?

A. He did not.

143 X Q. Did he always entrust them to him.

A. He did.

144 X Q. What did Capt. Smith pay or agree to pay to your father for the half interest in Bellevue?

A. I do not know.

R. H. TODD.

Sworn to and subscribed before me this 14th day June, 1883.
[SEAL.] JAMES CROWE,
Notary Public.

413 *Deposition of Michael A. Byrne.*

1 Q. Give your name, age, and residence.

A. Michael A. Byrne; aged forty years, past. I reside at 1336 N. Eleventh St., Philadelphia.

2 Q. Were you acquainted with Wm. H. Todd in his lifetime.

A. I was.

3 Q. Did you ever have charge of any business for him in this city?

A. I have collected rents for him several years—house rents.

4 Q. Do you know whether, from your knowledge of his real estate, *whether* he had any when he died?

A. At the time he died the property was in the name of James W. Cooper—I mean the city property, as distinguished from Mill Creek property.

5 Q. Do you know who has charge of that property now?

A. I believe all the property was sold at sheriff's sale, except the Sarah-street property, which I have not charge of now.

6 Q. For whose debts was the properties sold?

414 A. For Wm. H. Todd's debts; they were sold out under mortgages and judgments. The Sarah-street properties was also sold at sh-riff's sale, but the purchaser never took title on account of the encumbrances against it.

7 Q. Who has possession of the Sarah-street property now?

A. Mr. Cooper conveyed it to Mrs. Smith.

8 Q. Do you know what the consideration money was that was paid by Mrs. Smith?

A. I don't think it was anything.

9 Q. Please state the circumstances under which Mrs. Smith got control of the property.

A. The way Mr. Cooper got the property was on account of the trouble that Wm. H. Todd was in relation to the payment of taxes. There was a law here giving the collector of outstanding taxes power to distrain on the goods of the tenant for delinquent taxes some years ago. This law was tested in the supreme court and was decided to be unconstitutional, the court taking the ground that the goods of the tenant could not be distrained upon, but that goods of landlords could be distrained upon whereever found. Mr. Todd lived in a large house at cor. of Gratz street — Montgomery
415 avenue, which was furnished very nice, and every time there was a delinquent bill due on one of the tenements the deputy collector of delinquent taxes would make a distraint at the house of Mr. Todd, and to avoid this he deeded the property to Mr. Cooper; then the tables was turned, and they levied upon the goods of Mr. Cooper at his residence. Mr. Todd also had a lifetime interest in his wife- estate, which he also conveyed to James W. Cooper, as they were attaching the rents that were in my hands from this estate. The estates of Mrs. Todd was unencumbered except for arrearages in

taxes. Mr. Cooper still retained the property in his name until after the death of Mr. Todd, when it became such an annoyance to Mr. Cooper from Mr. Todd's children that he got them all together to agree, upon which one he would deed the property to, and Mrs. Capt. Smith was selected. Mr. Cooper drew no rents from the property while it was in that condition; in fact he gave me money out of his own pockets to pay the interest on the mortgages, as the rents could not keep up to the demands, the property being heavily mort-
416 gaged and several years of back taxes due, there being another delinquent tax law, passed later, giving them power to distrain upon the tenant's goods and sell them for the non-payment of taxes. The tenants refusing to pay me the rents, Mr. Cooper and myself had to make arrangements with the collector of delinquent taxes to pay the rents I collected over to him on account of payment of taxes, so nothing was to come out of the property.

10 Q. What consideration was paid to Mr. Todd by Mr. Cooper for the property?

A. I heard Mr. Todd say he was indebted to Mr. Cooper; I also heard Mr. Cooper say Todd was indebted to him; I don't know what consideration was paid; the deed will show that; it is on record.

Cross-examination of Mr. BYRNE by Mr. WADDELL:

1 X Q. State, if you please, if the object of the conveyance by Todd to Cooper of his property in Philadelphia was not to avoid the collection of debt which Todd owed?

A I don't think so, as there was nothing in the property for the creditors.

2 X Q. Have you not stated that it was to avoid the collection of taxes due by Todd on his personal property?

417 A. Yes; it was in regard to his furniture, as taxes was a first lien upon the real estate, prior to mortgages or interest upon mortgages or debts of any kind, and he wanted the real estate to pay the taxes—at least, I think that was it.

3 X Q. What became of Todd's household furniture?

A. I don't know.

4 X Q. Do you know how his house was furnished from 1876 to 1879?

A. The parlor and the sitting-room—they were furnished very fair; some of the furniture was ancient, and Mrs. Capt. Smith laid claim to some of the furniture as hers; I only know this from hearsay.

5 X Q. State from whom and under what circumstances you heard about Mrs. Smith's claim to part of the furniture.

A. From Mrs. Smith and some of the children.

6 X Q. Please state your answer to cross-interrogatory No. "2."

A. Yes; it was in regard to his furniture, as taxes was a first lien upon the real estate, prior to mortgages, interest on mortgages, or debts of any kind, as he wanted the real — to pay the taxes on it.

418 7 X Q. Then, after Mr. Todd's death, the legal title to Todd's property being vested in Cooper for the purposes which

you have stated, it was only necessary for Cooper to make a deed to Mrs. Smith or any other person in order to vest her or any other person with what title he had, without going into court, as executor, to have Todd's interest administered; do you understand it this way?

A. Yes, sir.

8 X Q. Mr. Cooper did this in good faith after Mr. Todd's death, did he?

A. I think he did.

9 X Q. Are you familiar with the property situated at Marlborough and Savery streets, which was sold after Mr. Todd's death and bought by Mr. Speise? If so, state all about that sale, how it was made, for what purpose, and what part of the money Mrs. Smith got.

A. It was sold at sheriff's sale on a mortgage, and the purchaser, Mr. Speise, in order to get peaceable possession of the houses without giving three months' notice, and to avoid suits of ejectment, gave her the sum of three hundred and fifty dollars, which was divided up equally among the children.

419 10 X Q. State, as near as you can, the dates of the deeds from Todd to Cooper, and state the books and pages on which they are recorded.

A. Deed of W. H. Todd to James W. Cooper for life interest in his wife's estate, recorded at Philadelphia in Deed Book D. H. L. No. 42, page 150; deed — W. H. Todd to James W. Cooper for property at Marlborough and Sarah street, recorded in Deed Book D. H. L. No. 192, page 252; deed — James W. Cooper to Josephine Smith for Marlborough and Sarah street property, recorded in deed-book L. W. No. 116, page 42.

Re-examination of Mr. BYRNE by J. F. ROBINSON:

1 Q. Please state whether Mr. Todd died leaving any real estate worth anything after satisfying the encumbrances on it.

A. No, sir; it was all heavily encumbered for far more than it was worth by both mortgages and judgments of record and taxes. I advised Mr. Todd to let a great deal of his property go for the mortgages, as the rents of his property would not begin to keep up the taxes and interest, as it was taking the rents from his life in-

420 terest in his wife's estate to keep up the expenses on the other property, along with his household expenses.

2 Q. Have you a list of judgments that were in force or unsatisfied at the time of his death, and that were a lien upon his real estate? If so, please make and file it as part of your deposition.

A. I have a duplicate certificate of judgments against Wm. H. Todd from the prothonotarie's office of the court of common pleas for the county of Philadelphia; I have, and file it and mark it Exhibit "M."

Recross-examination of Mr. BYRNE by Mr. WADDELL:

1 Re-X Q. Did not the deed made by Todd to Cooper for the purposes hereinbefore stated cover all his interest in real estate in Phil-

adelphia, and did he in fact die possessed of any real estate, so far as the record shows?

A. That I don't know. It strikes me that Montgomery avenue and Gratz street was not in the Cooper deed; all the other properties were.

[s.] MICHAEL A. BYRNE.

421 Sworn and subscribed before me this 14th day of June, A. D. 1883.

[SEAL.] JAMES CROWE,
Notary Public.

Exhibit M 33.

422 EXHIBIT "A" to Answer of Edwin Mole to Interrogatory No. 245. J. C., N. P.

Flour & cord ours.

January 1, Sunday.—Keep $20 of meat, the balance of one-half to Ned Smith, the balance to Sam. Trip & Ned Wilson.

—— 2, Monday.—Bob Black — Bob Coleman's account comes out of Henry Turner's next gin-ing.

——3, Tuesday.—Hart Mitchell and James Perkins' — goes together when gin-ed; axes to — delivered up.

March 25, '76.—Delivered to Bellevue Landing 10 bales of cotton, mark- *to* W H R.

April 15, '76.—Ship- to Luna Landing 18 bales, marked B. H. S., and one bale to Traywick, marked T.

April 17, '76.—E. E. Bolivar took two bales.

May 1.—Sent to Cohn four b. cotton ordered from Capt. Smith, e e
1,850.

Of Lewis Banks' crops, No.	7	on book,	460
"	3	"	470
"	34		430
"	35		490
			1,850

423 April 4, Tuesday.—One bale of Perkins' gin, marked *to* L C B, 435 ℔, No. 6 in book, mark- May 8, '76; delivered June 24, '76.

—— 5, Wednesday.—Four b. of Lewis Bank-' gin, No-. 1, 2, 3, 4, as marked in book, 1,810 ℔, and one bale of Perkins' gin, No. 8, 380 ℔, marked J. F. R., mark- May 8, '76.

—— 7th, Friday.—5 b. of Perkins' gin, No-. 2, 3, 4, 9, 11, as marked in book; one of Banks', No. 32, in book *mark*, mark- B. H. S., May 8th, '76.

August 5th.—Ship- by the Helena 148 sa*x* of cotton seed for Wedeley to Granville.

August 12th.—Delivered to Bellevue, Friday, 290 sack- of cotton seed.

August 16.—Capt. rec. for cotton seed from McCall, 99.20.

August 24.—Delivered to Bellevue Landing 304 sack- of seed, Capt. rec. $90.00 for the seed from McCall.

Octo. 4, '76.—Hauled out to Bellevue Landing eleven b. c., mark- B. H. S; 100 weights of bales, 400, 290, 435, 400, 490, 460, 400, 390, 445, 490, 380; 4,586.

424 Oct. 13th, '76.—Hauled to Luna Landing five b. c., marked B. H. S. 100.

Weight of bales:	No. 3	420
	4	400
	5	400
	12	400
	13	400
		2,020

Dec. 8th, '76.—Hauled out to Bellevue Landing ten b. c., marked B. H. S. Y. B.

Number and weights of bales in book:

Selwin.	No. 1	430
Floyde	" 1, 125	450
	250	375
Total,	375	
Ocross,	3	380
	No. 2	450
	3	380
San. Wilson,	No. 1	360
	6	345
Will Jarman,	3	310
	4	330
		3,810

1876, Dec. 23.—Hauled out to Bellevue Landing five b. c., marked B. H. S. Y. B.

Numbers and weights of b., marked in book of Jarvis Banks:

No. 4	340
5	400
6	400
7	400
9	400
	1,940

1877.—Hauled to Luna Landing January 10th, '77, five b. c., marked B. H. S. Y. B.

425 Numbered and w'hg- of bales marked in book of charges:

No. 4	395
8	420
10	390
11	390
16	390
	1,985

1877, Feb. 3rd.—Hauled to Bellevue Landing 6 b. c., marked B. H. S.
Y. B.
Numbered — weight in book — Jackson Blue:

No. 1	435
Henry Jamson, No. 5	415
3	330
4	370
2	340
1	250
	2,140

Wash. Clark taken one b. c., No. 6, 410.
March 20th, '77.—Hauled to Bellevue Landing 13 b. c., marked B. H. S.
Y. B.
Numbers and weight in book of Fred. Parish:

No. 5	430
Silas Brown, No. 5	430
7	435
Jim Webb and Ned Smith, No. 2	415
9	340
10	390
S. Tripp, No. 1	410
Josh. Truman, No. 5	495
7	475
Jack Newton, 13	475
No. 1	420
426 No. 9	430
Will Seman	420
	5,565

April 16th, '77.—Willie H. Todd, Jr., took 1 b. c. of Ador White, giving 460 lbs., and 1 b. c. of Alford Parish gin, 240 lbs.
July 7th, '77.—Hauled to Luna Landing 3 b. c. marked B. H. S.
Y. B.
Numbered and weighed.
Marked in book:

Sam. Tripp, No. 2	380
6	365
Brader Burns, No. 1	485
	1,230

July 31st, '77.—Hauled to Bellevue Landing 75 sacks of cotton seed for B. H. S.

Dec. 2.—Isaac Cham, dr., to E. Mole. To hauling to corn-house Brown's cotton and ginning, 500.

427 *Deposition of Samuel M. Galey.*

Q. State your name, age, and place of business.

A. Samuel M. Galey; aged twenty-four years; real estate agent; at 1309 Pine street, Philadelphia.

2 Q. Are you the agent of Mrs. Josephine V. Smith for the collection of rents from property on Sarah street?

A. Yes, sir.

3 Q. Please describe the property, giving its door numbers.

A. The number the property is 1033 Sarah street; it consists of six houses in a court; the houses all face on the court, but I call the houses in the rear of 1033 Nos. 1, 2, 3, 4, & 5.

4 Q. Please state what each house rents for monthly.

A. The first house rents for nine dollars per month, the second for six dollars per month, the third for five dollars a month; I — almost sure the next one rents for seven dollars per month, the next one I get no rent for, and the next one rents for six dollars per month.

5 Q. Do you collect the rents monthly as stated, and to
428 whom do you account and pay the same over?

A. The tenant now in the second house has not yet paid me any rent; I collect the others as stated, and account to Mrs. Smith.

6 Q. Who occupies the house from which you have collected no rent?

A. I understand that the tenant is a brother of Mrs. Smith.

7 Q. Do you know his name?

A. Todd is the last name, I believe; I am not positive of his first name.

8 Q. Have you had instructions from Mrs. Smith not to collect rents from the Mr. Todd for the house he occupied?

A. Yes, sir.

9 Q. What would be the monthly rental value of the house occupied by Mr. Todd?

A. About six or seven dollars.

10 Q. Are you acquainted with — value of real estate in the city of Philadelphia?

A. To a certain extent.

11 Q. What is the value of the six houses and the lot on which they stand?

A. I know very little of the value of property in that section of the city, and would rather not place a value.

429 12 Q. Is the value of such property fixed by the income or rents which may be derived therefrom?

A. That is an important factor in such calculations.

13 Q. About what value would a permanent income of four hun-

dred and sixty-three dollars per annum give to the property from which it is derived?

A. Judging by that alone, I should say about forty-five hundred dollars.

14 Q. Are there more brothers than one, of Mrs. Smith's, who occupy any portion of said property?

A. I understand that the occupant of the second house is also a brother.

15 Q. Do you mean to say that two houses are occupied by two brothers of Mrs. Smith?

A. So I believe.

16 Q. How long have they been so occupied?

—. One for about a year and the other for about a month.

17 Q. Have you instructions from Mrs. Smith to collect or not to collect rent from her brother who came in about a month ago?

A. I have instruction to collect.

18 Q. Do you know the first name of the party last referred to?

A. I think that it is William Todd.

430 19 Q. How long have you been collecting rents from said properties and accounting to Mrs. Smith for the same?

A. Since about April 1, 1882.

20 Q. Do you know who Mrs. Smith's agent was prior to that time?

A. Yes, sir; it was my father.

21 Q. How long prior to your agency was your father agent for Mrs. Smith?

A. Since October 1881, I believe.

Mr. Morris objects to all the foregoing testimony as irrelevant, and reserves all right of exceptions.

Cross-examination by Mr. MORRIS:

1 X Q. Do you know anything of the circumstances under which Mrs. Smith acquired title to this property?

A. I know nothing except by hearsay.

2 X Q. Do you know whether there are any encumbrances on the property, such as mortgages?

A. There is a mortgage.

3 X Q. Do you know who it was held by and by whom it was created?

A. No, sir.

4 X Q. Do you pay the interest on the mortgage for Mrs. Smith; & if so, to whom?

431 A. I do pay it and to Nathaniel Janney, who is a real estate agent.

5 X Q. Do you pay the taxes & water rent?

A. Sometimes.

6 — Q. Did you pay the taxes and water rent for 1882 and what was the amount?

A. I did not pay for 1882—I mean I did not pay taxes; I paid the water rent, which amounted to fifteen dollars for the whole prop-

erty; I paid the taxes and water rents for 1883; the water rent amounted to fifteen dollars and the taxes amounted to thirty-eight dollars and fifty-eight cents ($38.58). I pay the mortgage interest, amounting — one hundred and sixty-two dollars per annum; I think this is six per cent. on twenty-seven hundred dollars; I think the assessed value is about two thousand dollars.

7 X Q. Then the mortgage is considerably in excess of the assessed value of the property, is it not?

A. So it seems.

8 X Q. During the time that you have had any knowledge of the property what has been the average annual expenditure for repairs to the houses, city claims for paveing, or sums expended in any other manner than for taxes and interest on the mortgage?

A. I make the total of such expenses since October 25, 1881,
432 to the present time two hundred and sixteen dollars and twenty-five cents.

9 X Q. Will you please state the net income which you have handed over to Mrs. Smith in any one year since you have had knowledge of the property?

A. One hundred and eleven dollars is the amount which I have paid to Mrs. Smith, and she has paid to me eighty-one dollars to make the necessary amount for expenses, so that the net income received by Mrs. Smith is a total of thirty dollars in the past two years, and I now have on hand on account of that property eighteen dollars and fifty cents, which I have received since the date of last settlement, which was September 26th, 1883.

10 X Q. Do you know Mr. Benjamin H. Smith, the husband of Mrs. Smith?

A. I do not think I have ever met him.

11 X Q. Do you ever receive any instructions from him in regard to this property?

A. Not that I have any recollection of; I don't think I have received any instructions from him.

12 X Q. Did you know Mr. Wm. H. Todd?

A. No, sir.

13 X Q. Did you ever hear of the Yellow Bayou and Bellevue plantations in Arkansas?

433 A. I think I have heard Mrs. Smith mention the names.

14 X Q. Do you know who is the present owner of them or did you know that Mr. Wm. H. Todd was the owner of them at any time?

A. I do not know anything definitely about them.

15 X Q. Have you any personal knowledge of the relations between Mr. Wm. H. Todd and his creditors?

A. No, sir; no personal knowledge.

16 X Q. When is the interest on the mortgage due on the above property on Sarah street?

A. Next interest will fall due November twenty-sixth, 1883, and amounts to eighty-one dollars; towards this amount I have eighteen dollars on hand.

Redirect examination by Mr. WADDELL:

1 R. D. Q. State if the application of rents collected by you since your agency began to repair upon said property have bettered the condition of the property as compared with the condition at the time you took —.

A. No, sir; I think not; I think it is worse.

2 R. D. Q. State if any of the expenditures or disbursements made by you were for charges that had accrued prior to your agency.

A. Only for current expenses, as far as I know.

434 3 R. D. Q. Has the rent of the houses occupied by Mrs. Smith's brothers been collected by you and estimated in your account of net income, in answer to cross-question No. 9, on page eight?

A. No, sir; not during the occupancy by said brothers; I mean that I have collected no rent from Mrs. Smith's brother — that has — occupied by him for the past year, nor from the brother that has resided in the house for the past month.

Recross-examination by Mr. MORRISS:

R. X Q. Was not, however, the rent of this house occupied by Mrs. Smith's brother for the past year included in your estimate of four hundred and sixty-three dollars as being the total annual rental, as stated by Mr. Waddell?

A. I believe it was.

SAMUEL M. GAYLEY.

Sworn and subscribed before me this 6th day of October, A. D. 1883.

[SEAL.] JAMES CROWE,
Notary Public.

435 *Deposition of James W. Cooper.*

1 Q. State your name, place of residence, and business.

A. James A. Cooper; fifty-two years of age; cabinet manufacturer; I reside at 1927 Spring Garden street.

2 Q. Were you acquainted with Wm. H. Todd in his lifetime, and when did you become acquainted with him?

A. I was acquainted with him. I first became acquainted with him about 1872. I knew him until his death in 1879.

3 Q. Were you acquainted with his financial condition during that time or any part of that time? If yea, please state what it was.

A. I knew nothing except from the com-on expression of every one that was acquainted with him. I got some information from him, but he never made any statements. I formed my opinion that he was embarrassed from his sundry applications to me for loans for sundry amounts.

4 Q. About what time during your acquaintance with Wm. H. Todd did you learn that he was in embarrassed circumstances?

436 A. The first evidence that I had that he was thoroughly embarrassed was in 1876, when he made an effort to try to secure me for what I had loaned to him.

5 Q. Did you ever loan him money? I- yea, state about the time, the amounts, and manner of said loans.

A. I loaned him money from 1875 until the day of his death, in sums running from five dollars to about the sum of two hundred and fifty dollars.

6 Q. When said Todd applied for such loans, for what purposes did he state such loans were required?

A. At first he simply borrowed becauee he was short, without stating what use he was going to make of it; afterwards the larger sums he would say he had lawyers to pay and current expenses.

7 Q. What was the largest aggregate amount which Wm. H. Todd was indebted to you at any one time, for loans or otherwise?

A. As near as I can state, it would reach twenty-five hundred dollars.

437 8 Q. What did he owe you about the time of his death?

A. Eleven hundred dollars.

9 Q. When was it that he had reduced his indebtedness to you?

A. Some time prior to 1878; I think he reduced it during 1876 and 1877.

10 Q. About what amount did he owe you in the fall of 1877—I mean in September, 1877?

A. I could not tell that; it was reduced below $2,500 at that time; it might have been sixteen hundred dollars or it might have been less; I could not tell the exact amount; after the 1st of January, 1878, no charges *was* made against him, as I had no hopes of getting anything back after that.

11 Q. Are you the same J. W. Cooper mentioned in the last will of W. H. Todd, as co-executor thereof with Capt. B. H. Smith?

A. Yes, sir.

12 Q. Are you the same J. W. Cooper to whom the said Todd deeded his entire estate in Philadelphia prior to his death?

A. No, sir; he did not deed one-half or quarter of his property in Philadelphia to me.

438 13 Q. State what property he deeded to you.

A. The only property that I have any knowledge he deeded to me was the property in Sarah street. I was told he deeded the Marlborough-street property to me, but I was not cognizant of the fact. I knew he deed- the life estate in his wife's property; he deeded to me the income of his children in his wife's property, that he was supposed to have his wife's courtesy in.

14 Q. Are you the same J. W. Cooper in whose favor Wm. H. Todd confessed a judgment on the 24th of September, 1877, in the court of common pleas, in Philadelphia, for six thousand three hundred dollars?

A. I have no knowledge of such a fact.

15 Q. Did you ever institute legal proceedings in Chicot county, Arkansas, against Wm. H. Todd for the recovery of any sum of money; if yea, who was your attorney?

A. I placed the matter in the hands of a lawyer in Chicot county. I can't tell his name—that is, I can't tell it; it was either Reynolds, Rose, or Robinson. I think it was either one of those. I can't tell

which, but I think, from remarks made last summer, it was
439 Mr. Robinson; my instructions was to him, under no circumstances would I furnish him with any money unless he could make it out of the claim; that was about the gist of my instructions to him.

16 Q. Who recommended or gave the name of said attorney?

A. That I can't remember; I don't know, but I think I got it through our agency, who furnishes us with the names of attorneys, or I might have got it from some one else.

17 Q. Do you know you did not get it from Wm. H. Todd, Benjamine H. Smith, or Mr. Robinson himself?

A. I don't know, but I might have got it from some of Mr. Todd's letters or documents—I mean I had considerably papers and correspondence of Mr. Todd's to look over, and I may have got — from them.

18 Q. Have you ever seen Mr. Robinson, an attorney of Chicot county, Arkansas; if yes, when?

A. Last summer, to the best of my recollection.

19 Q. Did you have any correspondence with Mr. Robinson in 1877?

A. The only correspondence I had with him was in regard to that case—I presume it was in 1876 or 1877.

440 20 Q. You have stated that you put said claim in suit with the condition that you would incur no expense unless the claim was made; with whom and how did you stipulate these conditions?

A. With the lawyer by letter.

21 Q. Did you enclose your claim by letter?

A. I enclosed the amount of the claim.

22 Q. What, if any, correspondence occurred after you enclosed the amount in the letter?

A. To the best of my recollection, I received a bill of legal expenses, which I returned, and stated under no circumstances would I pay only on condition of his making the claim and getting the money.

23 Q. Did you return the bill or merely decline to pay it?

A. I returned the bill.

24 Q. Do you remember the items of said bill?

A. I do not.

25 Q. Did it include the cost of a transcript of the judgment for sixty-three hundred dollars, confessed in your favor by Wm. H. Todd in the court of common pleas in the city of Philadelphia?

A. I have no recollection of the items, but I am certain that
441 it contained no items for costs in Philadelphia.

26 Q. Have you ever been advised by your attorney, Mr. Robinson, or any other person that judgment had been recovered in Chicot county, Arkansas?

A. No information, unless it was contained in the letter which contained the bill.

27 Q. Did you ever supply Mr. Todd with money to pay the cost

of a transcript of your judgment in Philadelphia against him, or did you ever pay the costs of such transcripts yourself?

A. I certainly could not tell whether I did or not; I was well aware that the claim could not be collected in Arkansas; consequently I am satisfied I paid no expenses in connection with it, as the agreement with Mr. Todd — that I would be put to no expense or trouble in collecting my claims against him; my reason for that was that it was a debt of honor, and consequently I should be put to no inconvenience; that will explain our transactions as near as I can get at it.

28 Q. You have stated in a former answer that you gave your attorney the amount of W. H. Todd's indebtedness to you, for which he was to bring suit in Chicot county, Arkansas. What amount
442 did you give at that time?

A. I do not remember.

29 Q. Do you remember about or approximately what it was?

A. I do not; I think it was about fifteen hundred dollars or less.

30 Q. Is Capt. B. H. Smith the son-in-law of Wm. H. Todd?

A. I believe he is.

Mr. Morris objects to this testimony as being irre-va*l*ent.

1 X Q. Are you acquainted with Capt. B. H. Smith, and how long?

A. About three months.

2 X Q. Did you ever have any correspondence with him on the subject of your claim against Wm. H. Todd?

A. I did not. (J. C., N. P.)

3 X Q. Did you know, in 1876 or 1877, that he was or had been employed by Mr. Wm. H. Todd as manager of Yellow Bayou or Bellevue plantations in Arkansas?

A. Only from information furnished by Mr. Todd; I expressed surprise -at Mr. Todd should leave his interest in the hands of so inefficient men. He explained that he only had to do with the labor; that it was under the control or management of Mr. Smith— at least I inferred that; I understood from Mr. Todd that
443 Capt. Smith had the financial management of the whole thing; that he overlooked these men; these might be only ideas of my own; some of these inferences might be only biases of my own.

4 X Q. Do I understand you to say that Mr. Todd ever told you in so many words that Capt. B. H. Smith had the control and management of his interest in Chicot county, Arkansas or was the manager of Yellow Bayou and Bellevue plantations? If so, please give the date as near as you are able.

A. That is not putting it in any shape that I could answer it; the only thing was that when I expressed astonishment, as I say, then he led me to believe that Capt. Smith was the manager or had charge of it when he was not there. I can't repeat Mr. Todd's exact words at this length of time.

5 X Q. Was or was not the impression clear upon your mind, as derived from Mr. Todd's —, that Capt. B. H. Smith was in charge

of Mr. Todd's affairs in Arkansas, and that Mr. Todd relied upon him?

A. Always—I mean the impression was always clear upon my mind.

6 X Q. Are you able to state at what time this impression was first derived from Mr. Todd; was it not from the time of your
444 first acquaintance with him?

A. No, it was from 1875; prior to that time I had no conversation with him on the subject. I think it was prior to the 1st of July, 1875, that I derived this impression, as it was not until that time I began to question his solvency.

7 X Q. Did you qualify as an executor of Wm. H. Todd?

A. I did.

8 X Q. Did Capt. Smith?

A. I have no knowledge of his qualifying.

9 X Q. Did he ever act with you in the settling up of the affairs of the estate?

A. No, sir.

10 X Q. In your answer to question No. 13 you have stated that Mr. Todd conveyed certain real estate to you; what was the consideration of such conveyance to you?

A. My claim against him.

11 X Q. In your answer to question No. 14 you have stated "that you have no knowledge of a confession of judgment in your favor against him;" from your character of dealing with Mr. Todd was it — all strange that you should have been ignorant of this?

A. Not at all.

12 X Q. On the contrary, was it not always understood that
445 Mr. Todd should secure your claim as — as he was able, without inconvenience on your part?

—. It was always so understood.

13 X Q. In your answer to question No. 27 you have stated "that you were well aware that your claim could not be collected in Arkansas." Please give your reasons for that.

A. My reasons for that was from information received from letters from Mr. Todd's lawyers—I can't remember the names—and from Mr. Todd himself.

14 X Q. You knew, did you not, at that time, that Yellow Bayou plantation had been sold to satisfy other judgments against Mr. Todd?

A. That is my present impression, that I knew it at that time and I was pretty well posted then, for he never rec'd any letters from his lawyer but what he showed me, and I was then pretty well posted.

15 X Q. Were you acquainted with many of Mr. Todd's creditors?

A. I was not personally.

16 X Q. From your knowledge of Mr. Todd's business, please state whether, in your opinion, he used proper endeavors to settle with his creditors such as any ordinary business man could employ?

446 A. I could not answer, only from one particle of information I got. I have made two or three visits with him to Mr. Fox in Norristown to endeavor to borrow money to pay his most pressing claims against him; he also offered me a high rate of interest if I could raise money for him; there was nothing said about my claim, I always pushed it off; I did not press him for it, and told him to never mind it.

17 X Q. In regard to your own claim, then, was it the fact that led you to send it to Arkansas that executions had been issued and his Philadelphia properties sold?

A. It did not go there, I am satisfied, until Yellow Bayou had been sold, when, in consultation with Mr. Todd, he stated there was no question that when the case was finally settled—I mean his cases in the South—he would recover large sums of money; that I might be able to recover if I pushed the claim or had it probated or something like that; that is the reason *it* went there, and not with the expectation that I would recover.

18 X Q. Were there any executions issued upon judgments recovered here against Mr. Todd's Philadelphia property?

A. There was.

—. Was his property exhausted in settlement of judgments here?

447 A. Entirely.

20 X Q. To your knowledge, have there ever been proceedings instituted in Philadelphia county by Mr. Todd's creditors charging him, or others in his behalf, with a fraudulent disposition of his property in order to avoid just claims against his property?

A. Never, to my knowledge.

21 X Q. Were you conversant with Mr. Todd's business affairs up to the time of his death?

A. Yes; he would tell me all the creditors that were pushing him and what it was for.

22 X Q. Have you settled your account as his executor, and was his estate solvent?

A. I have, and it was not.

23 X Q. Was it not hopelessly insolvent, and had not Mr. Todd given up all of his property to satisfy his creditors in his lifetime?

A. It was, hopelessly; it was all gone; the creditors had foreclosed upon everything.

24 X Q. Are you the present owner of the property on Sarah street, which you have already referred to in your examination-in-chief; and, if not, to whom did you convey it?

448 A. I am not. I conveyed it to Mrs. Benjamin H. Smith at the solicitation of Mr. Todd's family.

25 X Q. Was the property valuable while you had it?

A. I never received a cent.

26 X Q. Was this property conveyed to you by Mr. Todd in order to defraud his creditors?

A. It was not, to my knowledge, but was to secure me in my claim.

27 X Q. Were you able to reduce your claim from the income of the property while it was in your hands?

A. I was not able to reduce it one cent, but, upon the contrary, it was increased; the property was an expense to me.

28 X Q. It was on this latter account, then, that you were willing to convey it to Mrs. Benj. H. Smith?

A. That was the reason.

Redirect examination by Mr. WADDELL:

1 Re-D. Ex. Who drew up the papers or deeds to you whereby Wm. H. Todd conveyed the Sarah-street property and his life estate in his wife's property, or his alleged life estate in his wife's property?

449 A. To the best of my knowledge, it — Michael Byrnes.

2 Re-D. Ex. Were said conveyances made at your solicitation?

A. They were not.

3 Re-D. Ex. State what, if any, trouble or inconvenience you were put to on account of taxes by reason of said property being in your name and Mr. Wm. H. Todd's statement relative to the taxes on the same.

A. I found on returning home a bill posted, a levy having been made upon my furniture, for taxes on property at cor. of Gratz and Montgomery avenue, Marlborough street. On calling upon Mr. Todd for an explanation he explained that his own furniture had been seized, and to get rid of them he told them I was the owner of the furniture, and they then proceeded to levy both upon my furniture and Mr. Todd's. I notified the tax office; then the matter was corrected at the tax office the next day.

Mr. Morris objects to the whole of the foregoing answer as being wholly incompetent and irrelevant.

4 Re-D. Ex. Was the matter corrected by the payment of the taxes?

A. Not that I know.

5 Re-D. Ex. Were the taxes paid or any part of them?

450 A. I did not pay them.

6 Re-D. Ex. Did you know of any one else paying them?

Objected to.

A. I did not.

7 Re-D. Ex. Do you not know that Mrs. B. H. Smith paid them or gave her father two hundred dollars for that purpose?

Objection continued.

A. I don't know that; I know I saw Mrs. Smith hand Mr. Todd —, which she said she would loan him to pay the taxes.

By Mr. MORRIS:

Re-X Q. This levy for taxes of which you have spoken was in consequence of an error or ignorance of the law in the tax office in Philadelphia, was it not?

A. The only explanation they gave me was that the man had no right to do it.

J. M. W. COOPER.

Sworn to and subscribed before me this 8th day of October, A. D. 1883.

[SEAL.] JAMES CROWE,
Notary Public.

451 *Deposition of Cornelius J. Bowles.*

1 Q. Please state your age, bussiness, and place of residence.

A. Forty years of age; I am a farmer; I reside at Rockhill township, Bucks county.

2 Q. How long have you lived there and where did you live prior to that?

A. I have lived in Bucks county for five years, and prior to that time I have lived in Philadelphia.

3 Q. Did you know Mr. Wm. H. Todd?

A. Yes, sir?

4 Q. What was the relationship between you?

A. I married his third eldest daughter.

5 Q. Were you in the habit of seeing Mr. Todd frequently?

A. I was.

6 Q. State whether or not in the year 1876, or prior or subsequent thereto, you received a letter from Mr. Wm. H. Todd upon the subject of the management of the Yellow Bayou plantation, in Arkansas.

A. I did.

7 Q. Will you produce that letter?

A. I can't find it among my papers.

452 8 Q. State whether or not you have made search for the letter. And, if so, when and where did you search?

A. I have searched my papers at my own house. I have a desk where I keep my private papers; I looked there and made a careful search there for it, and looked over all of my papers; to the best of my knowledge I looked for the letter last May, and also one evening during this week.

9 Q. Please give the date approximately of the letter and state from where it was written.

A. This letter I received in the winter of 1876; it might have been in January or February. The letter was sent to me from Arkansas. It was dated, I think, from Luna, Chicot county.

10 Q. Please give the substance of that letter, to the best of your recollection.

A. The letter was written by Mr. Todd to myself to secure him a man to superintend over the darkies at Yellow Bayou under the supervision of Capt. Benjamin H. Smith, I believe was the name; that was the extent of the letter, to the best of my knowledge.

Q. State what you did in pursuance of that letter.

453 A. I engaged a man by the name of Edwin Mole; I sent him down to Arkansas, and I instructed him to make his own agreement, and that he was to be under the supervision of Mr. Smith after Mr. Todd had left. I gave him the means to go South with and Mr. Todd paid me when he came home.

12 Q. Please state whether or not you ever had any conversation

with Mr. Wm. H. Todd upon the subject of his relations with Capt. Benjamin H. Smith in regard to the management of the Yellow Bayou plantation; and, if so, give the substance of them as near as you are able.

A. I had; Mr. Todd told me in person that Mr. Smith was the chief manager, and without his assistance he could not have got along. We had frequent conversations about things in the South, and he always spoke highly of the efficiency of Capt. Smith's management.

13 Q. Did Mr. Todd ever tell you what were the terms upon which Capt. Smith was managing Yellow Bayou plantation for him?

—. He never stipulated any salary and he never told me the amount, and always gave me to understand that he was on a
454 salary.

14 Q. Do you mean to say that Mr. Todd ever told you in so many words that Capt. Smith was managing Yellow Bayou plantation on a salary?

A. He did.

15 Q. During the years immediately prior to Mr. Todd's death in 1879, do you know whether his health permitted him to live in the South or not?

A. I know that it did not; he was very weak. He was very low, to the best of my knowledge, between one and two years. He could not have gone South the last two years of his existence; that was in the years 1877 and 1878.

16 Q. State what you know of his health prior to that time?

A. It was always very delicate.

17 Q. During the time that you knew him did his health permit him to live in the South?

A. It did not. I first became acquainted with Mr. Todd some time in the year 1875.

18 Q. State whether or not the admission by Mr. Todd of salary due to Capt. Smith, to which you have already referred, was
455 upon one occasion or frequently?

A. I understood it to be frequently. I always understood him to say continually that Capt. Smith was on a salary.

19 Q. Can you give me the date of these conversations and in what years they occurred?

A. I could not. Mr. Todd and I often visited at one time. He showed me the drawings of Yellow Bayou plantation and often spoke of Capt. Smith, when he first took Mr. Smith there and would teach him how to grow cotton. We often laughed over it when Mr. Todd and I were talking of when he first took Mr. Smith down to learn him how to grow cotton.

Cross-examination of CORNELIUS BOWLES by Mr. WADDELL:

1 X Q. When did you first become acquainted with Wm. H. Todd?

A. In 1875; some time during the year.

2 X Q. When did you marry his daughter?

A. In 1875, on November 25th.

3 X Q. When did you first become acquainted with Capt. Smith?
A. In this office, between the hours of 9 & 10 o'clock this morning.
456 4 X Q. Were you in the habit of seeing Mr. Todd frequently prior to your marriage to his daughter?
A. Not very frequently.
5 X Q. Did your conversations with Wm. H. Todd, referred to in your examination-in-chief, occur before or after marriage?
A. After my marriage.
6 X Q. How long after your marriage?
A. Could not gave any date.
7 X Q. Did you remember that Wm. H. Todd was present at your marriage in Philadelphia?
A. He was in Philadelphia.
8 X Q. Did he remain in Philadelphia long before he went to his plantation in Chicot county, Arkansas?
A. Only a short time.
9 X Q. Do you remember any conversation that occurred between you and him relative to Capt. Smith prior to his going to his plantation in 1875, in the fall?
A. I do not.
10 X Q. Was the conversations referred to after Wm. H. Todd's return from Yellow Bayou in 1876?
A. They were.
11 X Q. You state in answer to question number 6 that you received a letter from Mr. Todd. Where did you put that letter?
457 A. Among my papers.
12 X Q. Among your papers, where?
A. In my desk.
13 X Q. When did you put it there?
A. After I had read it.
14 X Q. Do you mean immediately after you had read it?
A. I could not stipulate as to how many minutes.
15 X Q. Do you know how many days, weeks, or years?
A. The same day.
16 X Q. Have you ever seen that letter since?
A. I did.
17 X Q. When?
A. When I engaged Edwin Mole. I showed him the letter and read it to him also.
18 X Q. Have you seen it since that time?
A. I have no recollection.
19 X Q. Please give the substance of that letter, as near as you can.

(Objected — by Mr. Morris, as the witness has already given the substance of the letter in his examination-in-chief.)

A. Mr. Todd wrote to me to secure him a man to take charge of the darkies on Yellow Bayou plantation under the supervision of Capt. Smith.

458 20 X Q. Do you intend this a repetition of the language of the letter?

A. To the best of my knowledge, I do.

21 X Q. When did you meet Edwin Mole, who you state you employed in accordance with said letter?

A. At my house.

22 X Q. Did the letter direct you to Mole as the man who Mr. Todd desired?

A. No.

23 X Q. What agreement did you make with Mole before his departure for Arkansas?

A. I did not make any.

24 X Q. What instructions did you give him?

A. To make his own agreement with Mr. Todd, but he was to be under the supervision of Capt. Smith.

25 X Q. Was the condition that he was to be under the supervision of Capt. Smith imperative and irrevocably fixed by you?

A. It was not.

26 X Q. Then was his engagement with Wm. H. Todd to be fixed and the terms agreed upon on his arrival in Arkansas?

A. It was.

27 X Q. Was it understood between you and Mr. Mole that he should go to Arkansas and take the place then occupied by Mr. Kirk?

459 A. No, I knew nothing of Mr. Kirk's engagement whatever, except I knew he was there.

28 X Q. In your answer to question No. 12 you stated that Mr. Todd told you that Mr. Smith was his chief manager; state when Mr. Todd told you this.

A. Some time in 1876 was the first, and at different times after.

29 X Q. Could it have been earlier than the summer of 1876, after Mr. Todd's return from the South?

A. It could not.

31 X Q. You state in your answer to question No. 14 that Wm. H. Todd told you that Capt. "Smith was manager under salary;". could this conversation have occurred prior to 1876?

A. No.

32 X Q. Did Wm. H. Todd ever return to the South after he left there in the spring or summer of 1876?

A. He did.

33 X Q. When?

A. The fall of 1877, to the best of my recollection.

34 X Q. How long did he remain?

A. I don't know.

35 X Q. Then you are positive that he went there in the fall of 1877?

460 A. Well, I think I am, to the best of my knowledge.

36 X Q. In your answer to question No. 18 "you state that Wm. H. Todd's admissions of salary due to Capt. Smith were frequent." Did you hear such admissions as late as 1877?

A. I could not give you any dates, but we had several conversations, but Mr. Todd always spoke of Capt. Smith being on salary.

37 X Q. In your answer to question No. 19 you state that Wm. H. Todd spoke of the time when he first "took Mr. Smith there" and would teach him how to grow cotton; are you acquainted with the circumstances under which Wm. H. Todd took Capt. Smith down to his plantation in Arkansas?

A. Yes.

38 X Q. State what those circumstances were?

A. I could not state what the agreements were.

39 X Q. I did not ask you what the agreements were; I asked you what the circumstances were.

A. I do not know; I did not understand question No. 37.

40 X Q. Did you ever learn from Wm. H. Todd that he was indebted to Capt. Smith prior to the time that Capt. Smith
461 first went to Arkansas?

A. No.

41 X Q. Have you any knowledge of the business relations that existed between Wm. H. Todd and Capt. Smith, as early as 1868?

A. No.

CORNELIUS J. BOWLES.

Sworn and subscribed before me this 6th day of October, A. D. 1883.

[SEAL.] JAMES CROWE,
Notary Public.

462 *Deposition of Wm. Kirk.*

1 Q. State your name, age, and place of residence.

A. Wm. Kirk, Jr.; aged thirty-four years; No. 686 N. Forty-second street, Philadelphia.

2 Q. Were you employed by Wm. H. Todd as manager of Yellow Bayou plantation, in Chicot county, Arkansas; if yea, when?

A. I was, in 1875.

3 Q. Please examine three letters, marked A, B, & C, Oct. 6, 1883, J. C., N. P. State if they are in the handwriting of Wm. H. Todd, if they were addressed to and received by you through the mail while you were upon said plantation and in the employ of said Todd.

A. These three letters I received from Wm. H. Todd through the mail; they are in his handwriting, and I received them while in the employ of William H. Todd.

Cross-examined by Mr. MORRIS:

X Q. You have been already examined and cross-examined in this case last June?

A. Yes, sir.

WM. KIRK, JR.

463 Affirmed and subscribed before me this 6th day of October, 1883.

[SEAL.] JAMES CROWE,
Notary Public.

464 *Deposition of Mrs. Ann Tyson.*

1 Q. Please state your name, age, and place of residence.

A. Ann Tyson; aged seventy-two years; I reside at rear of 706 N. Front street, No. 2, in Philadelphia.

2 Q. What is your business?

A. I stand in the market.

3 Q. Were you acquainted with the family of William H. Todd; if so, how long have you been acquainted?

A. I was acquainted with the family of Wm. H. Todd about eleven or twelve years.

4 Q. Are you acquainted with Eveline Mole?

A. Yes.

5 Q. What is her character for truth?

A. Well, her character for truth is like ordinary people for truth; I never knew her anything else than truthful.

6 Q. Do you regard her statements worthy of belief?

A. I do; I consider her a consciencious woman.

Cross-examined by Mr. E. B. MORRIS:

1 X Q. When did you become acquainted with Mrs. Evaline Mole?

465 A. Well, I suppose I cannot tell the exact time. At her father's house, about ten years ago; she was the first of the family I became acquainted with.

2 X Q. Where did you live then, and where did Mrs. Mole live then?

A. Mrs. Mole lived at her father's house at Montgomery avenue and Gratz street. I lived in Noble Street, just below Second street.

3 X Q. Was Mrs. Mole the wife of Edwin Mole at that time?

A. No, sir. Well, I think she was married at the time; I think she was married to Dr. Bolivar at that time.

4 X Q. Is Dr. Bolivar dead?

A. I do not know; I think she was divorced from him.

5 X Q. Do you know how many times Mrs. Mole has been married?

A. No, sir; I do not.

6 X Q. How many times have you seen her in the past ten years?

A. I have seen her almost every week except when she was South. I have seen her off and on every since—I seen her more or less.

7 X Q. Don't you know that in the period in which you have been speaking about, Mrs. Mole has been reputed to have been married at least five or six times?

466 A. I heard she was married; I don't know anything about it.

8 X Q. Have you ever had any opportunity of proving Mrs. Mole's character for truth? And, if so, state what they were.

A. In her manner and form of dealing; I always found her truthful in all I had to do with her, and I never heard any one say anything to the contrary.

9 X Q. Did you know her as Mrs. Rowan?

A. No, sir; I did not.
10 X Q. Did you know her as Mrs. Bunce?
A. I noticed that she bore that name.
11 X Q. Did you know her as Mrs. Gallagher?
A. I knew her since she bore that name.
12 X Q. Did you know her as Mrs. Laws?
A. No, sir; I never heard that name mentioned.

her
ANN x TYSON.
mark.

Sworn to and subscribed before me this 9th day of October, A. D. 1883.

[SEAL.] JAMES CROWE,
Notary Public.

The above name, "Ann Tyson," was written by James Crowe; her mark was witnessed by James Crowe Oct. 9th, 1883.

467 "A." Oct. 6, '83. J. C., N. P.

PHILA., 20 *June*, 1875.

DEAR SIR: Yours of the 9th inst. was received a few days since, the 1st specific information I have rec'd of the progress of the crops, the gin-ing, &c., all of which is satisfactory, and your doings on my place I do not complain of, and I instructed you to have the timbers hewed out for the gin levers, after which I mentioned and requested you if any funds — on hand to turn it over to Capt. Smith to meet any demand on me to which he has been by me appointed to give attention to for years past in my absence, and when Jenny left Phila. I gave her instructions to do likewise, expecting her to have $100 left to hand him, but it turned out to be forty only, and she did not even do that. Now, I have found no fault with you, & it was just as easy for you to have done as I said, turn over to Capt. S. any one dollar, as to have gone to the village. If you did not wish to see him, enclose it in a letter. I am aware you are one person and he another, but that does not alter the relations of you and myself in the least,
nor could I see why you need take a miff at the request, or
468 how you could feel it but a duty to yield to a request made
in due course of business; the amount was very inconsiderable at any rate, and Jenny had no means of making an application of it to my use, unless in getting supplies for the table or family use. You speak of all of you being well and all things moving well. Did I understand that Mitchell was working with Butts, or has he gone?

I have now fully answered your letter, and, as I told your father day before yesterday, your acts — giving me satisfaction, &c.

Now, if you are not satisfied with your position, if you leave you forfeit every dime of you service to the date of your departure. I employ men by the year, as I distinctly told you, and I expect compliance in everything pertaining to your faithful duty in managing the place and yielding to my requests, they being reasonable, none of which have thus — been overexacting or out of the way. I did

employ Leamons by the month expressly, and reserved the right to terminate his services when I pleased, and he the same.

The hot weather is coming on, and you may feel sensations to be relieved, but that won't do; stand fast or loose. If you should still feel inclined to come North and so reply, we will have to
469 hunt up a man to look after the crop and place generally.

You speak of all being well, I presume you mean Willie and Jenny, in your letter. I intended to drop Jenny a line ere this, but as she spoke of coming North in a letter to Minnie I deferred it until I learn her determination for the future; tell her for me to define her position. Is she a resident of Ozark or Phila.? Will she remain for the summer *but* Willie, or are they coming North? Never in my life were times so hard here; good carpenters $2.50 per day and some $2; $3 for brickmasons, and numbers out of employment at that; laborers going in gangs; no work. The strike in the coal regions over; gone to work at reduced wages; Cooper has stopped work in his stupendous factory; no sales of goods. Short crops of grain, and but little grass, owing to the cool, dry weather; to-day it is cool; slept under, comfortably, blankets all night. Corn low and yellow; so is oats & vegetables high; beef is dear; lamb 25 cts. per pound; steak the same; dry-goods cheap, but rents falling; very many idle houses; taxes awful high; on mill estates $365; 2.65 road tax. Where we are drifting too hard to tell. My disease has not yet returned on me, but I would not be surprised at any time to suffer once again. People that have a home and
470 are doing well ought to learn to be content. Let me hear from you soon, & Jenny and Willie also if they are still there.

Yours, very respectfully,

WM. H. TODD.

"B." J. C., N. P. October 6, 1883.

PHILA., *July 12th*, 1875.

DEAR WILL: Jinnie & Willie came safely to Phila. and are well now, but weather-beaten. I did not expect either of them to come away this summer, as I thought *as I thought* it decidedly best for each to become acclimated, but, nevertheless, we received them at my old home all right. My health is pretty good, but I am very busy; indeed; I am rebuilding the wall in full tide, and the weather is quite warm. Richard and Dan are not doing much farming, tho' Richard is useful in attending to the men in the country—4 or 5 masons, several carpenters, and 5 laborers. It will cost upwards of $5,000 cash. I think your father's family are well, tho' I did not see them The last trip or so I made out there Jenny and Willie gave me full information of everything, only B. rather fuller than before advised. Jenny says you understood me to say Capt.
471 Smith was to have the gin-levers got out. I never so understood it. I wrote to you to have the work done and get the levers of a size so as to season and allow counter-hewing when dried out some. The funds to pay for the work I will remit immediately

on the amount — made known to me. I want the timbers got out of the near swamp where those last boards were got, as straight timber is found there. I request no mill-right to put them in or fix the gin. Go by the old ones; yet I want it done good, and that without delay. I will try and ship another gin stand, and I fear I cannot run the gin with an engine for the crop of '75, but I am determined to run by steam at the earliest possible time. I will never move the Walker engine to Yellow Bayou, as it will be needed where it is. The case has been reversed, and I presume the place will be sold to pay the creditors, tho' I have not seen the opinion.

Your crop on the Yellow Bayou is well spoken of by all. I will ship a small lot of lumber from Memphis, as I am not advised of any at other points. Jennie says nothing of feed or fuel needed, but by all means have the levers hauled to the gin so soon as squared, fearing the swamps getting bad or other things taking the mules—for you know the gin-ing will occupy the mules,
472 more particularly if another stand is put in. Wages are reducing here every day and rents falling and hard to collect; numerous houses vacant, no sales of real estate at all, and yet building goes on wonderful.

I concur with you, if we make any cotton, to start the gin as early as possible, help pay indebtedness, and get supplies, what you need; by way of supplies let me know.

I want all the locust trees cut down at and around Arch Green and the new house. What contract you make write me, and I will comply with it. At the earliest day set here, at any point above gin given, and particularly at Gum Cut and around Jim Batt, burn the woods all you can, as it does not come if burned in July or August, or early in September. Try by all means to have a full and complete fence around the entire place, so no complaints can come from that source. If I can find a small engine here cheap enough to ship from here to New Orleans and then up the river I will try and do so at some day before I come down. Our coal land suit does not come to trial again until last of Oct., & it will make my visit rather late. Write all you —. Capt. Smith will likely go to
473 Little Rock very soon, as I have made such a request, and he may not want the hands to know of his going, so say nothing of it to our hands. He has to atteed to our financial affairs. All join in respect to you and well wishes for your health & happiness. Write soon, and fully.

Yours respectfully, WM. H. TODD.

To Wm. Kirk, Esq'r.

C. J. C., N. P. October 6, 1883.

PHILA., 18*th Aug.*, 1875.

DEAR WILL: Your favour of the 11th inst. came safe to hand.

NOTE.—This exhibit is so badly defaced that it cannot be read.—Clerk.

474 *Deposition of Geo. T. Wilkinson.*

Int. 1st. State your name, age, residence, and occupation.

Ans. My name is Geo. T. Wilkinson; age, 36 years; residence, Lake Village, Chicot Co., Arkansas; occupation, clerk of the circuit court of said county.

Int'g. 2nd. As such clerk have you charge of the records, judgments, executions, and records of deeds and mortgages and papers filed concerning same?

Ans. I have.

Int'g. 3d. Have you in charge two executions issued upon a judgment in favor of J. McMurray & Co. against Wm. H. Todd, and the returns of the sheriff thereon, and certificate of purchase of the sale of the property levied on said executions; and, if so, will you file a copy of the same as a part of your deposition?

475 Ans. I have, and herewith file certified copies of the same as part of my deposition, and identify the same by marking the same Exhibits "A & B."

Int'g. 4th. Have you in charge an execution on the sales bond in favor of Wm. P. Halliday, by Eveline E. Bollivar and Wm. H. Todd, & the return thereon? If so, file a certified copy of the same and identify it and make it a part of your deposition.

Ans. I have, and herewith file a certified copy of the same as part of my deposition and identify the same by marking same Exhibit "C."

Int'g. 5th. Have you in charge an execution for balance on said sales bond, & the return of the sheriff on same, and a certificate of purchase executed for the property sold under said execution? If so, attach a certified copy of the same to this your deposition and identify the same.

476 Ans. I have, and herewith file a copy, duly certified, of the same as a part of my deposition and identify the same by marking it Exhibit D.

Int'g. 6th. Have you in charge the complaint and proceedings in a suit by the defendant, B. H. Smith, against Wm. H. Todd, including the order of attachment & the return of the sheriff thereon, and the execution and return thereon and certificate of purchase for the property sold under said execution? If so, attach and file a certified copy of the same as a part of your deposition and identify the same.

Ans. I have, and herewith file a certified copy of the same as part of this my deposition & identify the same by marking it Exhibit "E."

Int'g. 7th. Have you in charge the records of deeds executed by the sheriff of Chicot county to Benj. H. Smith for the lands purchased at the sales under the executions in favor of McMur-

477 ray and Halliday, above referred to? And, if so, attach certified copies of the same & identify them.

Ans. I have, and herewith file certified copies of the same as part of this my deposition and identify the same by marking them Exhibits "F, G, & H."

Int'g. 8th. Do you find upon the record of judgments in your office a judgment in favor of Allen, Nugent & Co. against Wm. H. Todd, rendered on the 2nd day of February, 1878? If so, file a copy thereof and make it a part of your deposition and identify the same.

Ans. I do, and herewith file a certified copy of the same as a part of my deposition and identify the same by marking it Exhibit "J."

Int'g. 9th. Do you find upon the record of judgments in your office a judgment in favor of Thomas H. Allen against Wm.
478 H. Todd, rendered on the 2nd day of Feb'y, 1878? If so, file a copy thereof and make it a part of your deposition & identify the same.

Ans. I do, and herewith file a certified copy of the same as a part of this my deposition, and identify the same by marking it Exhibit "K."

Int'g. 10th. Have you in charge an execution in favor of James W. Cooper against Wm. H. Todd and the return of the sheriff on the same, and the certificate of purchase for the land sold under said execution? If so, please file a copy of the same and make them a part of your deposition & identify them.

Ans. I have, and herewith file a certified copy of the same as part of my deposition, and identify the same by marking it Exhibit "L."

Int'g. 11. Do you find upon your records a judgment in
479 favor of Messrs. Jurey & Gillis against Wm. Todd, B. H. Smith, & Isaac Cohen, rendered at the July term, 1876, of the Chicot circuit court? If so, please file a certified copy of the same as part of your deposition and identify it.

Ans. I do, & herewith file a certified copy of the same as part of this my deposition, and identity the same by marking it Exhibit "M."

Int'g. 12th. Who was the attorney for James W. Cooper in his suit against Wm. H. Todd in the Chicot circuit court? And make out and file and exhibit with your answer to this interrogatory a copy of the proceedings in said suit, including the original bond of Todd to Cooper upon which the judgment in Philadelphia was rendered, on file with the papers in said suit.

Ans. James F. Robinson, Esq., was the attorney of record for the plaintiff, James W. Cooper, in the suit above referred to.
480 A duly certified copy of the papers and proceedings referred to in int'g. No. 12 are herewith filed and made part of this my deposition, & the same is identified by being marked Exhibit "N."

Int'g. 13th. Have you in charge the records of mortgages executed by Wm. H. Todd to B. H. Smith, in August, 1876, June, 1877, and in March, 1878? If so, attach certified copies of the same as a part of your deposition and identify the same.

Ans. I have and herewith file certified copies of the same as part of this my deposition, and identify the same by marking them exhibits "O, P, & Q," respectively.

Int'g. 14. Have you in charge the record containing a deed executed in 1869 by Wm. H. Todd and wife to B. H. Smith for a one-half interest in the Bellevue plantation? If so, attach a certified
481 copy of said deed and make it a part of your deposition and identify it.

Ans. I have, and file herewith a certified copy of the same and make it a part of this my deposition, and identify the same by ma-king it Exhibit R.

Int'g. 15. Have you in charge in your office, as clerk of the Chicot probate court, a claim of B. H. Smith against the estate of Wm. H. Todd, amounting to the sum of $7,260.09? If so, file a certified copy thereof and make the same a part of your deposition & identify it.

Ans. I have, and herewith file a duly certified copy of the same and make it a part of my deposition, and identify the same by ma-king it Exhibit "S."

482 Int'g 16. Have you in charge the record of a deed executed by the sheriff of Chicot county to B. H. Smith for the lands purchased at the sale under the execution in favor of James W. Cooper against Wm. H. Todd by James F. Robinson, the certificate of purchase whereof was afterwards transferred to the said B. H. Smith? If so, please file a certified copy of said deed and make it a part of your deposition & identify the same.

Ans. I have, and file herewith a certified copy of the same and make it a part of my deposition & identify the same by ma-king it Exhibit "T."

STATE OF ARKANSAS, *County of Chicot:*

483 I, Geo. T. Wilkinson, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the preceding 8 pages of depositions and the following pages of writing hereto attached contain all of my deposition and the exhibits thereto taken by agreement of the counsel, at the place and in the cause in the caption hereof mentioned, on the 8th day of December, 1883.

Witness my hand and the seal of said court, hereto affixed this the 8th day of Dec'r, 1883.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

484 EXHIBIT A.

STATE OF ARKANSAS, *Chicot County:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are commanded that of the estate of Wm. H. Todd you cause to be made the sum of three hundred and eighteen dollars and seventy-four cents, which McMurray late in our Chicot circuit court recovered against him for debt, with interest at 10% per annum thereon from the 22nd day of July, 1876, until paid; also the sum of —— dollars —— cents, which was adjudged to the said —— —— for his costs in this suit expended, and that you have said sums of money in sixty days to render to the said McMurray & Co. *his* debt, interest, and costs aforesaid.

485 In witness whereof I have hereunto set my hand and affixed the seal of said court this 10th day of Aug., 1876.

[SEAL.] H. W. GRAVES, *Clerk.*

Endorsed: McMurray Co. *vs.* Wm. H. Todd. To sheriff of Chicot county. Issued Aug. 10, 1876, made returnable in sixty days, Rec. "H," page 98. Debt, $318.74; int. from July 22, 1876, at 10 %, $5.84; clerk's costs, $11.40; sheriff's, $12.45=$348.43; printer's fee, $10.00=$358.43.

Return of Sheriff.

This execution came to my hand on Friday, August 11, 1876, at 11 a. m.

S. H. HOLLAND, *Sheriff.*

I have this 28th day of Aug., 1876, levied on all the interest of Wm. H. Todd in and to the following-described lands, to wit: S. E. ½ sec. 6, N. E. ¼ sec. 7, S. E. ¼ sec. 7, in township 15 S., R. 1 west.

S. H HOLLAND, *Sheriff.*

On 28th September, 1876, I sold the interest of Wm. H.
486 Todd in the lands levied on on the 28th August for the total price and sum of $358.43 to B. H. Smith, who gave his bond, with lien reserved, according to law, for the said purchase-money, and this execution is hereby returned.

S. H. HOLLAND, *Sheriff.*

Execution Certificate.

McMURRAY & Co. *vs.* WM. H. TODD.

I, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that by virtue of an execution issued and to me directed by the clerk of the Chicot circuit court, dated August 10th, 1876, in favor of McMurray against Wm. H. Todd, I did, on the 28th day of August, 1876, levy upon the following-described lands, situate in Chicot county, Arkansas, to wit: S. E. ¼ sec. 6, N. E. ¼ sec. 7, S. E. ¼ sec. 7, T. 15 S., R. 1 W., and that I advertised said lands for sale accord-
487 ing to law, and that on the 28th day of September, 1876, between the hours for judicial sales, at the front door of the court-house in the town of Lake Village, I did offer said lands for sale on a credit of three months, and that at said sales B. H. Smith, being the highest bidder, became the purchaser of all the right, title, and interest of Wm. H. Todd in and to said lands, in the parcels and at the respective prices below mentioned, to wit:

N. E. ¼, S. E. ¼,	sec. 6,	T. 15 S.,	R. 1 west,	40 acres	----------	$29 87
N. W. ¼, S. E. ¼,	"	"	"	"	----------	29 87
S. W. ¼, S. E. ¼,	"	"	"	"	----------	29 87
S. E. ¼, S. E. ¼,	"	"	"	"	----------	29 87
N. E. ¼, N. E, ¼,	7	"	"	"	----------	29 87
N. W. ¼, N. E. ¼,	"	"	"	"	----------	29 87
S. W. ¼, N. E. ¼,	"	"	"	"	----------	29 87
S. E. ¼, N. E. ¼,	"	"	"	"	----------	29 87
N. E. ¼, S. E. ¼,	"	"	"	"	----------	29 87
N. W. ¼, S. E. ¼,	"	"	"	"	----------	29 87
S. W. ¼, S. E. ¼,	"	"	"	"	----------	29 87
S. E. ¼, S. E. ¼,	"	"	"	"	----------	29 87

And that three months thereafter, to wit, on the 28th day of
488 December, 1876, the above-mentioned total amount of three hundred and fifty-eight $\frac{43}{100}$ ($358.43) dollars was paid said B. H. Smith to me as such sheriff as purchase-money for said interest in said lands, the receipt whereof is hereby acknowledged, and I do hereby so certify.

Given under my hand this 28th day of December, 1876.

S. H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

I, H. W. Graves, clerk of the circuit court and *ex officio* recorder of the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 27th day of January, 1877, at — o'clock — m., and the same, together with the certificate of acknowledgment thereto, is duly recorded in Record Book T, — series, page 733.

In testimony whereof I have hereunto set my hand and
489 affixed the seal of said county this 24th day of April, 1877.

[SEAL.] H. W. GRAVES, *Clerk.*

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the above and foregoing writing contains a true and correct transcript of the execution issued on the judgment rendered at the July term, 1876, favor of McMurray & Co. *vs.* Wm. H. Todd and the return of the sheriff thereon, and the certificate of purchase executed to the purchaser of the property under said execution as the same remain of file and record in my office.

Witness my hand and the seal of said court, hereto affixed this 26th day of November, 1879.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

490 *Exhibit A to Deposition of Geo. T. Wilkinson*

STATE OF ARKANSAS, *Chicot County:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

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491 In witness whereof I have hereto set my hand and affixed the seal of said court the 10th day of Aug., 1876.

[SEAL.] H. W. GRAVES, *Clerk.*

Endorsed by clerk, viz:

McMurray & Co. *vs.* Wm. H. Todd. To sheriff of Chicot county. Issued Aug. 10th, 1876, made returnable in sixty days. Recorded — H, page 98. Debt, $318.74; int. from July 22nd, 1876, at 10 %; clerk's costs, $11.40.

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S. H. HOLLAND, *Sheriff.*

On 28th September, 1876, I sold the interest of Wm. H. Todd in the before-mentioned lands, levied on on 28th August, for the
492 total price and sum of $358.43, to B. H. Smith, who gave his bond, with lien renewed according to law, for the said purchase-money, and thus execution is hereby so returned.

S. H. HOLLAND, *Sheriff.*

Execution Certificate.

McMURRAY & Co. *vs.* WM. H. TODD.

— S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that, by virtue of an execution issued and to me directed by the clerk af the Chicot county circuit court, endorsed August 10th, 1876, in favor of McMurray & Co. against Wm. H. Todd, I did, on the 28th day of August, 1876, levy upon the following-described lands, situated in Chicot county, Ark., to wit: S. E. ¼ sec. 6, N. E. ¼ sec. 7, S. E. ¼ sec. 7, township 15 S., R. 1 W., and that I advertised said lands for sale according to law, and that on the 28th day of September, 1876, between the hours for judicial sales, at the front door of the court-house in the town of Lake Village, I did offer said lands for sale on a credit of three months, and that at said sale B. H. Smith, being the highest bidder, became the purchaser of all
493 the right, title, and interest of Wm. H. Todd in and to the said lands in the parcels and at the respective prices below mentioned, to wit:

N. E. ¼, S. E. ¼, sec. 6,	T. 15 S.,	R. 1 W.,	40 acres	$29 87
N. W. ¼, S. E. ¼, sec. 6,	"	"	40 acres	29 87
S. W. ¼, S. E. ¼, sec. 6,	"	"	40 acres	29 87
S. E. ¼, S. E. ¼, sec. 6,	"	"	40 acres	29 87
N. E. ¼, N. E. ¼, sec. 7,	"	"	40 acres	29 87
N. W. ¼, N. E. ¼, sec. 7,	"	"	40 acres	29 87
S. W. ¼, N. E. ¼, sec. 7,	"	"	40 acres	29 87
S. E. ¼, N. E. ¼, sec. 7,	"	"	40 acres	29 87
N. E. ¼, S. E. ¼, sec. 7,	"	"	40 acres	29 87
N. W. ¼, S. E. ¼, sec. 7,	"	"	40 acres	29 87
S. W. ¼, S. E. ¼, sec. 7,	"	"	40 acres	29 87
S. E. ¼, S. E. ¼, sec. 7,	"	"	40 acres	29 87

And that three months thereof, to wit, on the 28th day of December, 1876, the above-mentioned total amount of three hundred and fifty-eight $\frac{43}{100}$ ($358.43) dollars was paid by said B. H. Smith to me, as such sheriff, as purchase-money for said interest in said lands, the receipt whereof is hereby acknowledged, and I do hereby so certify.

Given under my hand this 28th day of Dec., 1876.

S. H. HOLLAND, *Sheriff.*

494 STATE OF ARKANSAS, *County of Chicot:*

I, H. W. Graves, clerk of the circuit court and *ex officio* recorder of the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 29th day of July, 1877, at — o'clock, and the same, together with the certificate of acknowledgement thereto, is duly recorded in Record Book —, series —, page 733.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 24th day of April, 1877.

[SEAL.] H. W. GRAVES, *Clerk.*

Endorsed: Filed for record Jan'y 27, 1877, at 10 o'clock a. m. H. W. Graves, cl'k, by George T. Wilkinson, D. C.

495 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder in and for the county & State aforesaid, do hereby certify that the preceding pages contain true and correct copies of the execution issued out of this court on the 10th day of August, 1876, in a cause wherein James M. Murray was plaintiff & Wm. H. Todd was defendant, together with the sheriff's return thereon and the certificate of purchase executed by said sheriff under the sale made under said execution, as the same appear of file and record in my office.

Witness my hand and the seal of said court, hereto affixed this the 26th day of November, A. D. 1879.

GEO. T. WILKINSON,
Clerk C't C't Chicot Co., Ark.

496 *Exhibit B to the Deposition of Geo. T. Wilkinson.*

STATE OF ARKANSAS, *Chicot County:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are commanded that of the estate of Wm. H. Todd you cause to be made the sum of one hundred & eighteen dollars and ninety-one cents, which McMurray & Co., late in our Chicot circuit court, recovered against him for debt, with interest thereon from the 21st day of July, 1876, until paid; also the sum of — dollars — cents, which was adjudged to the said —— —— for his costs in the suit expended, and that you have said sums of money in sixty days to render to the said McMurray & Co., his debt, interest, and costs aforesaid.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 10th day of Aug., 1876.

[SEAL.] H. W. GRAVES, *Clerk.*

497 Endorsed by clerk: J. McMurray & Co. *v.* W. H. Todd. To sheriff of Chicot county. Issued Aug. 10th, 1876. Made returnable in sixty days. Rec. H, page 93. Debt, $118.91; int. from July 21st, 1876, at 6 %, $1.35; clerk's costs, $—; sheriff's costs, $—.

Sheriff's Return on the Foregoing Execution.

This execution came to my hands on Friday, Aug. 11th, 1876, at 11 a. m.

S. H. HOLLAND, *Sheriff.*

I have this 28th day of August, 1876, levied upon all the right, title and interest of Wm. H. Todd, in and to the following-described lands, to wit: N. E. ¼ sec. 6, town. 15 S., R. 1 W.

S. H. HOLLAND.

On this 28th day of September, 1876, I sold the interest of Wm. H. Todd in and to the lands — on under this execution to B. H. Smith for the total price and sum of $139.21, who has given his bond for said purchase-money as provided by law, and I do hereby so return.

S. H. HOLLAND, *She'ff.*

Levy		75c.
	Mileage	60
498	Posting notices	75
	Mileage on same	3 70
2 % on $1.20		2 40
Return		75
		$8 95

Execution Certificate.

McMURRAY & Co. *v.* WM. H. TODD.

I, S. H. Holland, sheriff of Chicot —, do hereby certify that, by virtue of an execution issued and to me directed by the clerk of the Chicot circuit court, dated Aug. 10th, 1876, in favor of McMurray & Co. against Wm. H. Todd, I did, on the 28th day of August, 1876, levy upon the following-described lands, situate in said Chicot county and State of Arkansas, to wit: N. E. ¼ section 6, town. 15 S., R. 1 W., and that I advertised said lands for sale according to law, and that on the 28th day of September, 1876, between the hours for judicial sales, at the front door of the court-house, in the town of Lake Village, I did offer said lands for sale on a credit of
499 three months, and that at said sale Benjamin H. Smith, being the highest bidder therefor, became the purchaser of all of the right, title, and interest of Wm. H. Todd in and to said lands in the parcels and at the respective prices as below mentioned, to wit:

N. E. ¼, N. E. ¼, sec. 6, T. 15 S., R. 1 W.,	40	acres		$35 00
N. W. ¼, N. E. ¼, " " "	40	"		35 00
S. E. ¼, N. E. ¼, " " "	40	"		35 00
S. W. ¼, N. E. ¼, " " "	40	"		35 00

And that three months thereafter, to wit, on the 28th day of December, 1876, the above-mentioned total amount, one hundred and forty ($140.00) dollars was paid by the said B. H. Smith to me, as said sheriff, as purchase-money of said interest in said hands, the receipt whereof is hereby acknowledged, and I do hereby so certify.

Given under my hand, as such sheriff, this 28th Dec., 1876.

S. H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

500 I, H. W. Graves, clerk of the circuit court and *ex officio* recorder of the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 27th day of Jan'y, 1877, at — o'clock — m., and the same, together with the certificate of acknowledgement thereto is duly recorded in Record Book "T," page 734.

In testimony whereof I have hereunto set my hand and affixed the seal of this county this 24th day of April, 1877.

[SEAL.] H. W. GRAVES, *Clerk.*

Endorsed: Filed for record Jan'y 27, 1877, at 10 o'clock a. m. H. W. Graves, clerk, by Geo. T. Wilkinson, D. C.

501 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court & *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the preceding four pages contain a true and correct copy of the original execution, issued at the time and in the cause therein named, together with the sheriff's return thereon and the certificate of purchase executed by the sheriff for said — to the purchaser of the property sold under said execution, as the said execution, sheriff's return, and certificate of purchase appear of file and record in my office.

Witness my hand and official seal, hereto affixed this the 26th day of November, A. D. 1879.

[SEAL.] GEO. T. WILKINSON,
C'k C't C't.

502 *Exhibit C to the Deposition of Geo. T. Wilkinson.*

STATE OF ARKANSAS, *Chicot County,* } *ss:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are command- that of the estates of Eveline E. Bolivar and Wm. H. Todd you cause to be made the sum of nine thousand two hundred and sixty-one dollars and ten cents, which they owe to Wm. P. Halliday on a sale bond executed by them on the 6th day of April, 1876, with interest thereon from the 6th day of April, 1876, until paid; also the sum of thirty-five dollars for costs, which bond is on file in the office of the clerk of the Chicot circuit court, and

that you have said sum of money within sixty days to render to the said Wm. P. Halliday, his debt, interest, and costs aforesaid.

503 In witness whereof I have hereto set my hand and affixed the seal of said court this 11th day of July, 1876.

[SEAL.] H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

Endorsed thereon: No. 45. Wm. P. Halliday *vs.* Eveline E. Bolivar, principal, and Wm. H. Todd, surety. Ex. on sale bond. Original judgment, May term, 1873. Ch'c'y Record "D," page 77. To sheriff of Chicot county. Returnable in 60 days from July 11, 1876. Debt, $9,261.10; int. from April 6, 1876, $319.00; costs, $35.00; this execution, &c., 1.00; Co. tax, 50c.; sheriff's costs —; this ex. 24.85; 2 % com. on $9,070, 180.40=$9,822.85. No surety of any kind is to be taken in this case. Attest: H. W. Graves, cl'k, by Geo. T. Wilkinson, D. C.

Come to hand at 10 o'clock a. m., July 15, 1876—S. H. Holland, sheriff, by T. E. Willing, D. S.—and on same day I levied

504 upon the following described lands and advertised them for sale on the 14th August, 1876, to wit: S. W. ¼ sec. 9, S. E. ¼ sec. 10, E. fr'l ½ of N. E. ¼ sec. 10, N. fr'l ½ sec. 11, S. ½ sec. 11, fr'l sec. 12, sec. 13, sec. 14, S. ½ sec. 15, N. E. ¼ sec. 17, S. E. ¼ sec. 21, S. ½ sec. 22, E. ½ N. E. ¼, sec. 22, sec. 23, E. ½ N. W. ¼ sec. 24, W. ½ sec. 26, S. W. ¼ sec. 26, and sec. 29, all in township 15 S., R. 2 west, and on the said 14th day of August, 1876, between the hours for judicial sales, I did offer and sell to W. P. Halliday all the right, title, and interest of said Wm. H. Todd and Eveline E. Bolivar in and to the before-mentioned lands for the total price and sum of $9,070, and executed to him a certificate of purchase for same this Aug. 14th, 1876.

S. H. HOLLAND, *Sheriff.*

Sheriff's fees, this execution; levy, 75c.; posting notices, 75; mileage and ferriage on same, $10.50; ret., 75c.; printing fees, $10.00= $22.75; 2 % com., $9,070, $181.40; making certificate, 50=$204.65.

505 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the Chicot circuit court in and for the county and State aforesaid, do hereby certify that the preceding two pages contain a true and correct copy of an execution issued out of this court on the 11th day of July, 1876, on a sale bond executed by Mrs. E. E. Bolivar, as principal, and Wm. H. Todd, as surety thereon and the sheriff's return thereon, as the same appears of file in my office.

Witness my hand and official seal, hereto affixed this 26th day of November, A. D. 1879.

[SEAL.] GEO. T. WILKINSON, *Cl'k.*

506 *Exhibit D to the Deposition of Geo T. Wilkinson.*

STATE OF ARKANSAS, *Chicot County:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are commanded that of the estates of Eveline E. Bolivar and Wm. H. Todd you cause to be made the sum of seven hundred and fifty-two dollars and eighty-five cents, which they owe to Wm. P. Halliday as a balance on a sale bond executed by them on the 6th day of April, 1876, with 10 % interest thereon from the 14th day of August, 1876, until paid; also the sum of — dollars for costs, which bond is on file in the office of the clerk of the Chicot circuit court, and that you have said sum of money within sixty days to render to the said Wm. P. Halliday, his debt, interest, and costs aforesaid.

507 In witness whereof I have hereunto set my hand and affixed the seal of said court this 19th day August, 1876.

[SEAL.] H. W. GRAVES, *Clerk.*
By GEO. T. WILKINSON, *D. C.*

Endorsed by clerk: No. 52. Wm. P. Halliday *v.* Eveline E. Bollivar, principal, & Wm. H. Todd, surety.

Decree. May term, 1873. Ch'c'y Rec. D, pp. 77. To sheriff of Chicot county. Returnable in 60 days from Aug. 19, '78.

Bal. debt	$752 85
Int., 10%, from Aug. 14, '76,	9 30
This Ex. & Co. tax	1 25
	763 40
Sheriff's fees	33 31
	$796 71

No stay of execution of any kind will be taken in this case.

Attest: H. W. GRAVES, *Clk.*
By GEO. T. WILKINSON, *D. C.*

508 *Sheriff's Return.*

This execution came to my hands on 19th August, at 5 p. m.
S. H. HOLLAND, *Sheriff.*

And I have this 28th day of August, 1876, levied on the interest of Wm. H. Todd in the following described lands, to wit:

S. ½, N. W. ¼, sec. 6; S. W. ¼, sec. 6; N. W. ¼, sec. 7; S. W. ¼, sec. 7, all in township 15 S., R. 1 W.

S. H. HOLLAND.

And I did, on 28th day of September, 1876, offer said lands for sale according to law, and B. H. Smith became the purchaser at the price and sum of $796.71, and this execution satisfied.

NOTE OF CLERK.—This receipt attached to the foregoing execution, viz:

"Law office of D. H. Reynolds,
LAKE VILLAGE, ARK., *Sept.* 30, 1876.

Rec'd of S. H. Holland, sheriff, &c., the draft of Benj. H.
509 Smith on First National Bank of Memphis, Tenn., in his favor for $796.71, being amount of execution in favor of Halliday *v.* Todd, &c., on which sale was had on Sept. 28, 1876, say, $762.15 debt, and 34.51 costs, &c., and upon its payment to be satisfaction of said execution.

D. H. REYNOLDS."

Endorsed: The draft has been paid. Oct. 14, 1876. D. H. Reynolds.

Certificate of Purchase under Above Execution.

WM. P. HALLIDAY *vs.* E. E. BOLIVAR and WM. H. TODD.

Alias execution certificate.

I, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that by virtue of an *alias* execution on sale bond, issued and to me directed by the clerk of the Chicot circuit court, dated August 19th, 1876, in favor of Wm. P. Halliday against Eveline E. Bollivar, as principal, and Wm. H. Todd, surety, I did, on the 28th
510 day of August, 1876, levy upon the following, described lands situate in Chicot county, Arkansas, to wit: S. ½, N. W. ¼, sec. 6; S. W. ¼, sec. 6; N. W. ¼, sec. 7; S. W. ¼, sec. 7, T. 15 S., R. 1 W., and that I advertised said lands for sale according to law, and that on the 28th day of September, 1876, between the hours for judicial sales, at the front door of the court-house, in the town of Lake Village, I did offer said lands for sale for cash in hand, and that at said sale B. H. Smith, being the highest bidder, became the purchaser of all the right, title, and interest of Wm. H. Todd in and to said lands, in the parcels and at the respective prices below mentioned, viz:

S. E. ¼, N. W. ¼, sec. 6, T. 15 S., R. 1 W.,	40	acres				$56 90
S. W. ¼, N. W. ¼, sec. 6, T. 15 S., R. 1 W.,	40	acres				56 90
N. E. ¼, S. W. ¼, " " "	40	acres				56 90
N. W. ¼, S. W. ¼, " " "	40	"				56 90
S. W. ¼, S. W. ¼, " " "	40	"				56 90
S. E. ¼, S. W. ¼, " " "	40	"				56 91
N. E. ¼, N. W. ¼, " 7, " "	40	"				56 91
N. W. ¼, N. W. ¼, sec. 7, T. 15 S., R. 1 W.,	40	acres				56 90
511 S. W. ¼, N. W. ¼, sec. 7, T. 15 S., R. 1 W.,	40	acres				56 90
S. E. ¼, N. W. ¼, " 7 " "	40	"				56 90
N. E. ¼, S. W. ¼, " 7 " "	40	"				56 90
N. W. ¼, S. W. ¼, " " " "	40	"				56 90
S. W. ¼, S. W. ¼, " " " "	40	"				56 90
S. E. ¼, S. W. ¼, " " " "	40	"				56 90

And that said B. H. Smith has paid to me as such sheriff the above-mentioned total amount of seven hundred and ninety-six $\frac{71}{100}$ dollars as purchase-money for said interest in said lands, and I do hereby so certify.

S. H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

Certificate of purchased endorsed: Filed for record Jan'y 27, 1877, at 10 o'clock a. m. H. W. Graves, clerk, by Geo. T. Wilkinson, D. C.

STATE OF ARKANSAS, *County of Chicot:*

512 I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the preceding four pages & the above writing on this page contain a true & correct transcript of an *alias* execution issued out of this court the 19th day of August, 1876, on a sales bond executed by Mrs. E. E. Bolivar, as principal, and W. H. Todd, as surety thereon, and the sheriff's return thereon, together with the certificate of purchase executed at the sale made under said execution, as the same appear of file and record in my office.

Witness my hand and official seal hereto attached this the 26th day of November, A. D. 1879.

GEO. T. WILKINSON, *Clk.*

513 *Exhibit "E" to the Deposition of Geo. T. Wilkinson.*

Complaint at law.

Chicot Circuit Court. January Term, 1877.

BENJAMIN H. SMITH, Plaintiff,

against

WILLIAM H. TODD, Defendant.

The plaintiff, Benjamin H. Smith, states that the defendant, William H. Todd, is indebted to him in the sum of eight thousand dollars for labor performed by the plaintiff for the defendant, particulars of which are set out in an account filed herewith and made part of this complaint, no part of which said sum has been paid; whereupon plaintiff prays judgment for eight thousand dollars and for other relief.

JAMES F. ROBINSON,
Att'y for Plaintiff.

STATE OF ARKANSAS, } *sct:*
County of Chicot, }

514 The plaintiff, Benjamin H. Smith, says that he believes the statements in the foregoing complaints are true.

BENJAMIN H. SMITH.

Subscribed and sworn to before me this 4th day of August, 1876.

H. W. GRAVES, *Clerk,*
Per GEO. T. WILKINSON, *D. C.*

Affidavit.

STATE OF ARKANSAS, *County of Chicot:*

Chicot Circuit Court.

BENJAMIN H. SMITH, Plaintiff,
against
WILLIAM H. TODD, Defendant.

The plaintiff, Benjamin H. Smith, states that the claim in this action against the defendant, Wm. H. Todd, is for money due for labor performed by plaintiff for defendant, and that it is a just claim; that he ought, as he believes, to recover thereon eight thousand dollars, and that said defendant, Wm. H. Todd, is a non-resident of the State of Arkansas.

BENJAMIN H. SMITH.

515 Subscribed and sworn to before me this 4th day of August, 1876.

H. W. GRAVES, *Clerk*,
Per GEO. T. WILKINSON, *D. C.*

Bond.

Chicot Circuit Court.

BENJAMIN H. SMITH, Plaintiff,
against
WILLIAM H. TODD, Defendant.

We undertake that the plaintiff, Benjamin H. Smith, shall pay to the defendant, William H. Todd, all damage which he may sustain by reason of this action if the order therefor is wrongfully obtained.
Aug. 4, 1876.

BENJ. H. SMITH.
ISAAC COHEN,
Per H. COHEN.
HARRIS COHEN.

Attest:
H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

Account.

Wm. H. Todd to Benj. H. Smith, Dr.

1876.
Aug. 4. To amount due for services rendered in the supervision and management of said Todd's Yellow
516 Bayou plantation and his half interest in the Bellevue plantation, from January, 1869, to date, at one thousand dollars per annum, and interest---- $8,000

BENJ. H. SMITH.

Endorsed by clerk: "Filed an order of attachment, & summons issued this the 4th day of August, 1876. H. W. Graves, clerk, by Geo. T. Wilkinson, D. C."

Order of Attachment.

STATE OF ARKANSAS, *County of Chicot:*

The State of Arkansas to the sheriff of Chicot county:

You are hereby commanded to attach Wm. H. Todd by all and singular his goods and chattels, lands and tenements, credits and effects not exempt from execution, or so much thereof as shall
517 be sufficient to secure the sum of eight thousand dollars, the debt as sworn to, with interest and cost of suit, in whose hands or possession the same may be found in your county; and you are also commanded to summon the said Wm. H. Todd to be and appear before the judge of our circuit court at the court-house in the county of Chicot, on the first day of our next January term, it being the second Monday in January next, after the date hereof, then and there to answer the complaint of the plaintiff, Benj. H. Smith.

In testimony whereof I have hereunto set my hand and affixed the seal of said court on this 4th day of August, 1876.

[SEAL.] H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

518 *Sheriff's Return.*

This writ came to my hands on 5th August, 1876, at 4 p. m., and I have this 8th day of August, same year, served the same by attaching the following personal property of the within-named Wm. Todd on Yellow Bayou plantation, in Chicot county, Arkansas, to wit: ¼ interest in cotton raised by Henry Turner, about 5 bales, more or less, in gin; ¼ int. cotton of William Turner, 4 bales, more or less, in pen; ¼ int. in Braden Brown's 5 bales, more or less, in pen; ½ int. in James Webb's cotton, 4 b., more or less, in pens; ½ int. in Sam. Williams' 2 b., more or less, in pens; ½ int. in A. Cottonham's cotton, 2 b., more or less, in pen; ½ int. in Clay Cottonham's cotton, 3 bales, more or less, in pens; also the following interest which said Todd has in the now growing crop on Yellow Bayou, cultivated by the persons and squads respectively mentioned, to wit: Jackson Bowie, ½ int., 6 b., more or less; Lloyd Warren, per E. Mole, ½ int., 5 b., more or less.

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Clarissa Thurmon,	½	int.,	2	b.,	more or less.
Leonard Tripp,	½	"	3	"	" "
Braden Brown,	¼	"	4	"	" "
Billy Robinson,	¼	"	6	bales,	" "
Cy. Brown,	¼	"	4	"	" "
Charles White,	½	"	2	"	" "
William Turner,			4	"	" "
Jake Newton's squad,			4	"	" "
John Turner's "			4	"	" "
Clay Cottenham's "			10	"	" "
Henry Turner's "			12	b. c.,	more or less.
James Webb'- "			5	"	" "
Sam Tripp'- "			6	"	" "

Sam Wilson's squad, 4 b. c., more or less.
Lewis Banks' " 6 " " "
Celia Brown's crop, 4 " " "
Also the following mentioned and described stock, to wit:
1 brown horse mule named Mack.
1 " " " Dan.
1 black mare " Emma..
1 sorrel " " Celia.
1 grizzle horse " Pete.
1 black mare mule " Dave.
1 bay " " " David.
1 brown horse " John.
1 black jack " Jack.
520 1 cream-colored horse mule, named Burke.
1 bay " " " Glass.
1 black horse mule, named George.
1 roan mare, named May.
1 sorrel pony.
1 stud colt (white).
2 white cows.
1 " calf.
1 spotted calf.
1 yearling.
1 spotted cow.
2 sheep.
3 farm wagons.
1 carriage.
1 cart.
1 set carriage harness.
1 gin stand.
12 sets plow-gears.
1 lad*ie*'s saddle.
7 plows.
8 side lines.
2 sweeps.
1 p'r cotton balances & 1 gin stand.
And I have left the same in charge of Mr. E. Mole, who has this day been appointed by me as custodian at the request of the plaintiff, B. H. Smith.

S. H. HOLLAND, *She'ff.*

521 The within-mentioned cotton was this day released to the def't, W. H. Todd, on order of pl'ff, B. H. Smith.

S. H. HOLLAND, *She'ff.*

I have also, on the 19th Dec., attached the following-described lands by going upon the same and leaving copy of attachment with B. H. Smith, in whose possession I found the same; said lands are described as follows, to wit:

Und. ½ sec. 5; und. ½ W. ½ sec. 8; und. ½ W. ½ S. E. ¼ sec. 8; und. ½ S. ½ S. ½ sec. 4; und. ½ diagonal S. ½ N. ½ S. ½ sec. 4, all in town. 15 S., R. 1 W.; also all fr'l sec. 12, E. of W. bank of Yellow Bayou.

S. H. HOLLAND, *She'ff.*

At the July term, 1877, of the circuit court of Chicot county, Arkansas, on the 25th day of July, 1877, a day of said term of said court, among others, the following proceedings were had, to wit:

B. H. SMITH
against
WM. H. TODD. } 957.

522 On this day comes J. R. Martin, att'y, and enters the appearance of the defendant, and leave is given him to answer, and the defendant files his answer.

Defendant's Answer.

Chicot Circuit Court.

BENJ. H. SMITH *vs.* W. H. TODD.

Answer.

Comes the defendant, by attorney, and denies each and every allegation in plaintiff's complaint herein, as well as each and every item of his account sued on herein.

J. R. MARTIN,
For Defendant.

Filed in open court July 25, 1877.

H. W. GRAVES, *Clerk.*

At the July term, 1877, of the circuit court of Chicot county, Arkansas, on the 25th day of July, 1877, a day of said term
523 of said court, among others, the following proceedings were had, to wit:

Judgment.

BENJ. H. SMITH
against
WILLIAM H. TODD. } 957.

On this day this cause coming on to — heard, both parties being present by their attorneys and announcing themselves ready for trial of this case, and thereupon came a jury of S. N. Caughey and eleven other good and lawful jurors, who were sworn to well and truly try this case and a true verdict render according to the evidence and the law in the case, and, after hearing the evidence and instructions of the court, returned into court with the following verdict indorsed upon the complaint: "We, the jury, find for the plaintiff, and assess his damages at $8,000.00. S. N. Caughey, foreman."

It is therefore ordered and adjudged and considered by the
524 court that the plaintiff, B. H. Smith, have and recover of and from the defendant, Wm. H. Todd, the sum of eight thousand dollars, with interest from this date, and all costs in this suit; and, it further appearing that this is a suit by attachment and that the writ of attachment herein was, on the 8th day of August, 1876, duly and properly levied upon the following property: Thirteen head of

mules, two horses, six head of cattle, two head of sheep, and a lot of farming utensils, all particularly described in said writ; and also, on the 19th day of December, 1876, that said writ was duly levied upon the following-described real estate: Und. ½ sec. 5; und. ½ W. ½ sec. 8; und. ¼ W. ½ S. E. ¼ sec. 8; und. ½ S. ½ S. ½ sec. 4; und. ½ diagonal S. ½ N. ½ S. ½ sec. 4, all in township 15 S., R. 1 W.; also all fr'l sec. 12, E. of W. bank of Yellow Bayou, the property of defendant herein, and is a lien upon the same from the dates of said levy:

525 It is therefore ordered that the said property, or so much thereof as is necessary, be sold to satisfy the judgment herein by the sheriff upon his first giving twenty days' notice of the time, place, and terms of sale, in accordance with law.

At the January term, 1878, of the circuit court of Chicot Co., Arkansas, on the 31st day of January, 1878, a day of said term of said court, among others the following proceedings were had, viz:

BENJAMIN H. SMITH
vs. } 957.
WILLIAM H. TODD.

On this day came the plaintiff, by his attorney, as well as the defendant, by his att'y, and, it appearing to the court that the time and place of sale of the property attached in this suit had not been entered up at the last term of this court in the judgment as

526 rendered, it is, on motion of plaintiff, considered and adjudged that said judgment be made to speak the truth, now as for then by fixing the place of sale of the attached property at the dwelling-house on Yellow Bayou plantation and the time the first Monday in April, 1878, the sheriff giving twenty days' notice of said sale, as required by law.

At the July term, 1878, of the circuit court of Chicot county, Ark., on the 15th day of July, 1878, a day of said term of said court, the following, among other, proceedings were had, viz:

BENJ. H. SMITH *v.* W. H. TODD.

On this day comes S. H. Holland, sheriff, and files his report of the sale of the property herein attached and ordered to be

527 sold by the court at a former term; and it appearing to the court that at the time and place and on the terms set forth in said order he made sale of the lands herein attached, to wit:

An und. ½, sec. 5; und. ½ W ½, sec. 8; und. ½ W. ½ S. E. ¼, sec. 8; und. ½ S. ½ S. ½, sec. 4; und. ½ (diag.) S. ½ of N. ½, sec. 4, all in township 15 S., R. 1 W.; also of fr'l, sec. 12, E. of W. bank of Yellow Bayou, as by the return upon said writ of attachment appears; and of the personal property herein attached, to wit: One brown horse mule, named Mack; one mule, named Dan; one mule, named Emma; and one mule, named Celia; and one mule, named Pete; and one mule, named Dave; and one mule, named David; and one mule, named John; and one mule, named Jack; and one mule,

named Burke; one Glass, one George, and one May; sorrel pony,
stud colt, 2 white cows, 1 white calf, 1 spotted calf, 1 yearling,
528 1 spotted cow, 2 sheep, 3 farm wagons, 1 carriage, 1 cart, 1
set carriage harness, 1 gin-stand, 12 set plow-gears, 7 plows,
8 side lines, 2 sweeps, 1 p'r cotton balances, 1 gin-stand; and which said property was purchased by B. H. Smith for the respective sums set opposite said property as above, amounting in the aggregate to the sum of $4,055.00; and it appearing further to the court that said sheriff had in all things complied with the order of the court in this cause, it is therefore ordered and considered by the court that said sale be in all things approved and confirmed.

Execution and Return.

STATE OF ARKANSAS, *Chicot County:*

The State of Arkansas to the sheriff of Chicot county:

Whereas Benjamin H. Smith hath heretofore, to wit, on the
529 4th day of August, A. D. 1876, instituted in the circuit court of Chicot county, Arkansas, his suit by attachment against Wm. H. Todd, the writ whereof was levied upon certain property and effects of the said Wm. H. Todd, to wit:

1 brown horse mule, named Mack.
" " " " " Dan.
" black mare " " Emma.
" sorrel " " " Celia.
" grizzle horse " " Pete.
" black mare " " Dave.
" bay " " " Davie.
1 brown horse " " John.
" black jack " " Jack.
" cream-colored " " Burke.
" bay horse " " Glass.
1 black " " " George.
" roan mare " " May.

1 stud colt (white), 2 white cows, 1 white calf, 1 spotted calf, 1 yearling, 1 spotted cow, 2 sheep, 3 farm wagons, 1 carriage, 1 cart, 1 set carriage harness, 1 gin-stand, 12 set plow-gears, 7 plows, 8 side lines, 2 sweeps, 1 p'r cotton balances, and 1 gin-stand; also an und.
530 $\frac{1}{2}$ of sec. 5; und. $\frac{1}{2}$ W. $\frac{1}{2}$ of sec. 8; und. $\frac{1}{2}$ W. $\frac{1}{2}$ S. E. $\frac{1}{4}$, sec. 8; und. $\frac{1}{2}$ S. $\frac{1}{2}$ S. $\frac{1}{2}$, sec. 4; und. $\frac{1}{2}$ (diag.) S. $\frac{1}{2}$ of N. $\frac{1}{2}$, sec. 4, all in township 15 S., R. 1 W.; also all of fr'l sec. 12, E. of W. bank of Yellow Bayou, as by the return upon said writ of attachment appears; and whereas the said Benjamin H. Smith in our said circuit court, on the 25th day of July, A. D. 1877, recovered judgment for the sum of $8,000.00 for his damages, and $— for costs of suit, against said Wm. H. Todd, which bears interest at the rate of 6 % per annum from the 25th day of July, 1877, until paid:

You are therefore hereby commanded that out of the above-described property and effects, or as much thereof as will be necessary, you cause to be made the sum of $8,000.00, eight thousand dollars,

recovered as aforesaid, with 6 % per annum interest thereon from the 25th day of July, 1877, until paid, and the further sum
531 of $—, which was adjudged to the said Benjamin H. Smith for his costs in said suit expended; and that you have said sums of money within sixty days to render to said Benjamin H. Smith for his debt, interest, and costs aforesaid.

In testimony whereof I have hereunto set my hand and the seal of said court, affixed this the 22d day of Feb'y, A. D. 1878.

H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

Endorsed thereon: No. 59. B. H. Smith *vs.* Wm. H. Todd. Execution. To the sheriff of Chicot county. Returnable in 60 days from Feb'y 22, 1878. Judgment, July term, 1877. C't c't, Rec. H, 263. Debt, $8,000.00; 6 % int. from July 25, '77; cl'k's costs, $6.05; this ex. and tax, $1.25; sheriff's costs, $—. No stay of execution will be taken in this case. H. W. Graves, clerk, by Geo. T. Wilkinson, D. C.

By virtue of a *nunc pro tunc* order made at the Jan'y term,
532 1878, of this court in the within-entitled cause, you are hereby authorized and directed to make sale of the attached property herein described and mentioned, at the dwelling-house of Wm. H. Todd, on the Yellow Bayou plantation, on the first Monday in April, 1878, first giving (20) twenty days' notice of such sale, as required by law.

Attest:
H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

Sheriff's Return.

This execution came to my hands on the 23d day of Feb'y, 1878, at 10 a. m.

S. H. HOLLAND, *She'ff.*

I hereby return that at the time specified in this writ I sold the personal and real property herein mentioned and ordered to be sold after advertising as herein directed, and that said sale
533 was made in accordance with the within advertisement, and at said sale B. H. Smith was the highest and best bidder therefor and became the purchaser thereof for the total price and sum of four thousand and fifty-five dollars ($4,055), which sum is by plaintiff ordered placed as a credit hereon, and this writ is hereby so returned.

S. H. HOLLAND, *She'ff.*

Sheriff's Certificate of Purchase.

Certificate of purchase. Sheriff Chicot county to Benjamin H. Smith.

BENJAMIN H. SMITH *v.* WM. H. TODD.

Order of sale.

I, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby
25—185

certify that on the 22 day of February, 1878, there was issued, and to me directed and delivered by the clerk of the Chicot circuit court, an order of sale directing me to sell certain lands and personal
534 property heretofore attached by me as sheriff as aforesaid in a cause wherein Benjamin H. Smith was plaintiff and William H. Todd was defendant, in which cause the said plaintiff recovered judgment against said defendant in our Chicot circuit court for the sum of $8,000.00 and costs, and that in obedience to said order I advertised said lands and personal property in accordance with the directions of said Chicot circuit court, as therein endorsed by the said clerk. and on the first day of April, 1878, in strict accordance with said order as to time, place, and terms of sale, I did offer the same for sale, and that at said sale Benjamin H. Smith, being the highest bidder for —, became the purchaser of the following-described tracts of land, in the quantities and for the respective prices or amounts set opposite each, to wit:

N. E. ¼, N. E. ¼, sec. 5, town. 15 S., R. 1 W.		$100 00
N. W. ¼, N. E. ¼, sec. 5, town. 15 S., R. 1 W.		100 00
535 S. W. ¼, N. E. ¼ " " "		100 00
S. E. ¼, N. E. ¼ " " "		100 00
N. E. ¼, N. W. ¼, sec. 5, town. 15 S., R. 1 W.		100 00
N. W. ¼, N. W. ¼ " " "		100 00
S. W. ¼, N. W. ¼ " " "		100 00
S. E. ¼, N. W. ¼ " " "		100 00
N. E. ¼, S. W. ¼ " " "		100 00
N. W. ¼, S. W. ¼ " " "		100 00
S. W. ¼, S. W. ¼ " " "		100 00
S. E. ¼, S. W. ¼ " " "		400 00
N. E. ¼, S. E. ¼ " " "		100 00
N. W. ¼, S. E. ¼ " " "		100 00
S. W. ¼, S. E. ¼ " " "		100 00
S. E. ¼, S. E. ¼ " " "		100 00
S. E. ¼, S. E. ¼, sec. 4, town. 15 S., R. 1 W.		5 00
S. W. ¼, S. E. ¼ " " "		25 00
S. E. ¼, S. W. ¼ " " "		50 00
S. W. ¼, S. W. ¼ " " "		100 00
N. E. ¼, N. W. ¼ 8, " "		100 00
N. W. ¼, N. W. ¼ " " "		500 00
S. W. ¼, N. W. ¼ " " "		50 00
S. E. ¼, N. W. ¼ " " "		50 00
N. W. ¼, S. E. ¼ " " "		10 00
S. W. ¼, S. E. ¼ " " "		10 00
N. E. ¼, S. W. ¼ " " "		50 00
N. W. ¼, S. W. ¼ " " "		50 00
S. W. ¼, S. W. ¼ " " "		50 00
S. E. ¼, S. W. ¼, sec. 8, town. 15 S., R. 1, W.		50 00
536 N. E. ¼, N. E. ¼, sec. 12, E. of W. bank of Yellow Bayou		$50 00
S. E. ¼, N. E. ¼, " " " " "		50 00
N. E. ¼, S. E. ¼, " " " " "		50 00
S. E. ¼, S. E. ¼, " " " " "		25 00

Being a total price and sum of three thousand one hundred and seventy-five dollars ($3,175.00), which amount said plaintiff ordered to be placed as a credit on said judgment in part satisfaction thereof, and I do hereby so certify.

Given under my hand, as such sheriff aforesaid, this first day of April, A. D. 1878,

S. H. HOLLAND, *Sheriff.*

Filed for record, Oct. 7, 1878.

H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

Recorded November 20th, 1878.

GEO. T. WILKINSON, *Cl'k, &c.*

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder within and for the county and State above mentioned,
537 do hereby certify that the preceding pages contain a true, full, complete, and correct transcript of all proceedings had in the case of Benjamin H. Smith against Wm. H. Todd, in said court, together with the execution issued upon the judgment rendered in said cause, and the sheriff's return, and also the certificate of purchase executed by S. H. Holland to B. H. Smith, at the sale made under said execution, as each and all of said papers & record entries appear of file and record in my office.

Witness my hand and official seal, hereto affixed this the 26th day of November, 1879.

[SEAL.] GEO. T. WILKINSON, *Cl'k.*

Exhibit "F" to the Deposition of Geo. T. Wilkinson.

Sheriff's deed. S. H. Holland, sheriff, to B. H. Smith.

538 To all to whom these presents shall come I, Samuel H. Holland, sheriff of Chicot county, Arkansas, send greeting:

Whereas by virtue of a writ of execution issued out of the circuit court of Chicot county, in favor of McMurray & Co. against Wm. H. Todd, to the sheriff aforesaid directed and delivered, commanding him that of the estate of the said Wm. H. Todd in his county he cause to be made certain moneys in said writ of execution specified, as on reference to the said writ, now on file in said court, will more fully appear; and whereas the said sheriff did, in obedience to the said command, levy on, take, and seize all the estate, right, title, and interest of said William H. Todd in and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the 28th day of Septem-
539 ber, 1876, sell said premises at public auction at the front door of the court-house of said county of Chicot, he having first given notice of the time, place, and terms of sale by advertising the same according to law, at which sale the said premises were struck

certify that on the 22 day of February, 1878, there was issued, and to me directed and delivered by the clerk of the Chicot circuit court, an order of sale directing me to sell certain lands and personal
534 property heretofore attached by me as sheriff as aforesaid in a cause wherein Benjamin H. Smith was plaintiff and William H. Todd was defendant, in which cause the said plaintiff recovered judgment against said defendant in our Chicot circuit court for the sum of $8,000.00 and costs, and that in obedience to said order I advertised said lands and personal property in accordance with the directions of said Chicot circuit court, as therein endorsed by the said clerk. and on the first day of April, 1878, in strict accordance with said order as to time, place, and terms of sale, I did offer the same for sale, and that at said sale Benjamin H. Smith, being the highest bidder for —, became the purchaser of the following-described tracts of land, in the quantities and for the respective prices or amounts set opposite each, to wit:

N. E. ¼, N. E. ¼, sec. 5, town. 15 S., R. 1 W.		$100 00
N. W. ¼, N. E. ¼, sec. 5, town. 15 S., R. 1 W.		100 00
535 S. W. ¼, N. E. ¼	" " "	100 00
S. E. ¼, N. E. ¼	" " "	100 00
N. E. ¼, N. W. ¼, sec. 5, town. 15 S., R. 1 W.		100 00
N. W. ¼, N. W. ¼	" " "	100 00
S. W. ¼, N. W. ¼	" " "	100 00
S. E. ¼, N. W. ¼	" " "	100 00
N. E. ¼, S. W. ¼	" " "	100 00
N. W. ¼, S. W. ¼	" " "	100 00
S. W. ¼, S. W. ¼	" " "	100 00
S. E. ¼, S. W. ¼	" " "	400 00
N. E. ¼, S. E. ¼	" " "	100 00
N. W. ¼, S. E. ¼	" " "	100 00
S. W. ¼, S. E. ¼	" " "	100 00
S. E. ¼, S. E. ¼	" " "	100 00
S. E. ¼, S. E. ¼, sec. 4, town. 15 S., R. 1 W.		5 00
S. W. ¼, S. E. ¼	" " "	25 00
S. E. ¼, S. W. ¼	" " "	50 00
S. W. ¼, S. W. ¼	" " "	100 00
N. E. ¼, N. W. ¼ 8,	" " "	100 00
N. W. ¼, N. W. ¼	" " "	500 00
S. W. ¼, N. W. ¼	" " "	50 00
S. E. ¼, N. W. ¼	" " "	50 00
N. W. ¼, S. E. ¼	" " "	10 00
S. W. ¼, S. E. ¼	" " "	10 00
N. E. ¼, S. W. ¼	" " "	50 00
N. W. ¼, S. W. ¼	" " "	50 00
S. W. ¼, S. W. ¼	" " "	50 00
S. E. ¼, S. W. ¼, sec. 8, town. 15 S., R. 1, W.		50 00
536 N. E. ¼, N. E. ¼, sec. 12, E. of W. bank of Yellow Bayou		$50 00
S. E. ¼, N. E. ¼, " " " " "		50 00
N. E. ¼, S. E. ¼, " " " " "		50 00
S. E. ¼, S. E. ¼, " " " " "		25 00

Being a total price and sum of three thousand one hundred and seventy-five dollars ($3,175.00), which amount said plaintiff ordered to be placed as a credit on said judgment in part satisfaction thereof, and I do hereby so certify.

Given under my hand, as such sheriff aforesaid, this first day of April, A. D. 1878,

S. H. HOLLAND, *Sheriff.*

Filed for record, Oct. 7, 1878.

H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

Recorded November 20th, 1878.

GEO. T. WILKINSON, *Cl'k, &c.*

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder within and for the county and State above mentioned,
537 do hereby certify that the preceding pages contain a true, full, complete, and correct transcript of all proceedings had in the case of Benjamin H. Smith against Wm. H. Todd, in said court, together with the execution issued upon the judgment rendered in said cause, and the sheriff's return, and also the certificate of purchase executed by S. H. Holland to B. H. Smith, at the sale made under said execution, as each and all of said papers & record entries appear of file and record in my office.

Witness my hand and official seal, hereto affixed this the 26th day of November, 1879.

[SEAL.] GEO. T. WILKINSON, *Cl'k.*

Exhibit "F" to the Deposition of Geo. T. Wilkinson.

Sheriff's deed. S. H. Holland, sheriff, to B. H. Smith.

538 To all to whom these presents shall come I, Samuel H. Holland, sheriff of Chicot county, Arkansas, send greeting:

Whereas by virtue of a writ of execution issued out of the circuit court of Chicot county, in favor of McMurray & Co. against Wm. H. Todd, to the sheriff aforesaid directed and delivered, commanding him that of the estate of the said Wm. H. Todd in his county he cause to be made certain moneys in said writ of execution specified, as on reference to the said writ, now on file in said court, will more fully appear; and whereas the said sheriff did, in obedience to the said command, levy on, take, and seize all the estate, right, title, and interest of said William H. Todd in and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the 28th day of Septem-
539 ber, 1876, sell said premises at public auction at the front door of the court-house of said county of Chicot, he having first given notice of the time, place, and terms of sale by advertising the same according to law, at which sale the said premises were struck

off and sold to Benjamin H. Smith for the sum of one hundred and thirty-nine $\frac{21}{100}$ dollars ($139.21), he, the said Benjamin H. Smith, being the highest bidder therefor and the purchaser thereof for said sum of $139.21, whereupon the said sheriff, after receiving the said sum of money so bid aforesaid, gave to him such certificate as is by law directed to be given, a copy of which was filed with the said writ of execution; and whereas the twelve months after date of such certificate and sale have expired without any redemption of the said premises having been made:

Now, this indenture witnesseth: That I, Samuel H. Hol-
540 land, the sheriff as aforesaid, by virtue of said writ and in pursuance of the statute in such cases made and provided, for and in consideration of the sum of money above mentioned to me in hand paid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said Benjamin H. Smith, his heirs or assigns, all the estate, right, title, and interest of the said William H. Todd, whereof he was seized or possessed at the time of the rendition of the judgment or at any time thereafter, in and to all that portion of the lands in said county of Chicot known and described as follows, to wit, northeast quarter of section six (N. E. $\frac{1}{4}$ sec. 6), township 15 south, range 1 west, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to
541 hold the said above-mentioned and described premises, with the appurtenances, unto the said Benjamin H. Smith, his heirs and assigns, forever, as fully and absolutely as I, Samuel H. Holland, the sheriff aforesaid, may, can, or ought to, by virtue of the said writ and of the statutes in such cases made and provided, grant, bargain, sell, convey, and confirm the same.

In witness whereof I, the said sheriff, have hereunto set my hand and seal on this the 6th day of October, A. D. 1878.

S. H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

Be it remembered that on this 25th day of January, 1878, personally appeared before me, S. H. Holland, sheriff of the aforesaid county and State, to me personally well known and whose
542 genuine signature appears to the above deed, and acknowledged that he executed the same for the uses, purposes, and considerations therein mentioned & set forth.

Witness my hand as clerk of the circuit court this 25th day of Jan'y, 1878.

[SEAL.] H. W. GRAVES, *Clerk.*

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, circuit clerk and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the preceding 3 pages and the above writing on this page contain a true and correct copy of a deed executed by the said S. H. Holland, as

sheriff of Chicot county, Arkansas, to B. H. Smith, as the same appears of record in my office in Record Book of Deeds, &c., "V," pages 795 and 796.

Witness my hand and the seal o fsaid court, hereto affixed
543 this 26th day of Nov., 1879.

[SEAL.] GEO. T. WILKINSON,
Cl'k & Recorder.

Exhibit "G" to the Deposition of Geo. T. Wilkinson.

Sheriff's deed. S. H. Holland, sheriff, to Benj. H. Smith.

To all to whom these presents may come I, Samuel H. Holland, sheriff of Chicot county, Arkansas, send greeting:

Whereas by virtue of a writ of execution issued out of the circuit court of Chicot county in favor of McMurray & Co. against William H. Todd, to the sheriff aforesaid directed and delivered, commanding him that of the estate of the said William H. Todd in his county he should cause to be made certain moneys in said writ of execution specified, as on reference to the said writ now on file
544 in said court will more fully appear; and whereas the said sheriff did, in obedience to the said command, levy on, take, and seize all the estate, right, title, and interest of said William H. Todd in and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the 28th day of September, 1876, sell said premises at public auction, at the front door of the court-house of said county of Chicot, he having first given notice of the time, place, and terms of sale by advertising the same according to law, at which sale the said premises were struck off and sold to Benjamin H. Smith for the sum of three hundred and fifty-eight $\frac{43}{100}$ dollars ($358.43), he, the said Benjamin H. Smith, being the highest bidder therefor and the purchaser thereof for the said sum of three hundred and fifty-eight and forty-three hundredths dollars; whereupon the said sheriff,
545 after receiving from the said purchaser the said sum of money so bid as aforesaid, gave to him such certificate as is by law directed to be given, a copy of which was filed with the said execution writ; and whereas the twelve months after the date of such certificate and sale having expired without any redemption of the said premises having been made, now this indenture witnesseth: That I, Samuel H. Holland, the sheriff as aforesaid, by virtue of said writ and in pursuance of the statutes in such cases made and provided, for and in consideration of the sum of money above mentioned to me in hand paid, as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said Benjamin H. Smith, his heirs or assigns, all the estate, right, title, and interest of the said William H. Todd whereof
546 he was seized or possessed at the date of the judgment on which said execution was issued, or at any time afterward, in and to all that portion of the lands in said county of Chicot known

and described as follows, to wit, southeast quarter of section 6, the northeast quarter of section 7, and the southeast quarter of section 7, all in township 15 south, range one west, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining:

To have and to hold the above-mentioned and described premises, with the appurtenances, unto the said Benjamin H. Smith, his heirs and assigns, forever, as fully and absolutely as I, Samuel H. Holland, sheriff aforesaid, may, can, or ought to by virtue of the said writ and of the statutes in such cases made and provided, grant, bargain, sell, convey, and confirm the same.

547 In witness whereof I, the said sheriff, have hereunto set my hand and seal on this the 6th day of October, 1877.

SAMUEL H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

Be it remembered that on this 25th day of January, 1878, personally appeared before me S. H. Holland, sheriff of Chicot county, to me personally well known, and whose genuine signature appears to the foregoing deed, and acknowledged that he executed the same for the uses, purposes, and considerations therein mentioned and set forth.

Witness my hand, as clerk of the circuit court in and for the aforesaid county and State, this 23d Jan'y, 1878.

[SEAL.] H. W. GRAVES, *Clerk.*

Filed for record Jan'y 25, 1878, at 4½ p. m.

H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

548 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, circuit clerk and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the preceding three pages and the above writing on this page contain a true and correct copy of a deed executed by the said S. H. Holland, as sheriff of Chicot county, Arkansas, to Benj. H. Smith, as the same appears of record in my office, in Record Book of Deeds, etc., "V," pages 793 and 794.

Witness my hand and the seal of said court, hereto affixed this 29th day of November, 1879.

[SEAL.] GEO. T. WILKINSON,
Cl'k & Recorder.

549 *Exhibit A to the Deposition of Geo. T. Wilkinson.*

Sheriff's deed. S. H. Holland, sheriff, to Benj. H. Smith.

To all to whom these presents shall come I, Samuel H. Holland, sheriff of Chicot county, Arkansas, send greeting:

Whereas by virtue of a writ of execution issued out of the circuit court of Chicot county in favor of William P. Halliday against Eveline E. Bolivar and William H. Todd, to the sheriff aforesaid

directed and delivered, commanding him that of the estate of the — Eveline E. Bolivar and William H. Todd in his county he should cause to be made certain monies in said writ of execution specified, as on reference to said writ, now on file in said court, will more fully appear; and whereas the said sheriff did, in obedience to the said command, levy on, take, and seize all the estate, right, title, and interest of said Eveline E. Bolivar and William H. Todd in and to
550 the lands tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the 28th day of September, 1876, sell said premises at public auction at the front door of the court-house of said county of Chicot, he having first given notice of the time, place, and terms of sale by advertising the same according to law, at which sale the said premises were struck off and sold to Benjamin H. Smith for the sum of seven hundred and ninety-six and $\frac{71}{100}$ dollars ($796.71), he, the said Benjamin H. Smith, being the highest bidder therefor and the purchaser thereof for said sum of $796.71; whereupon, the said sheriff, after receiving from the said purchaser the said sum of money so bid as aforesaid, gave to him such certificate as is by law
551 directed to be given, a copy of which was filed with the said writ of execution; and whereas the twelve months after the date of such certificate and sale have expired without any redemption of the said premises having been made: Now this indenture witnesseth: That I, Samuel H. Holland, the sheriff as aforesaid, by virtue of said writ and in pursuance of the statutes in such case made and provided, for and in consideration of the sum of money above mentioned to me in hand paid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said Benjamin H. Smith, his heirs or assigns, all the estate, right, title, and interest of the said Eveline E. Bolivar and William H. Todd whereof they were seized or possessed at the time of the rendition of the judgment or decree on
552 which said writ of execution was issued, or at — time thereafter, in and to all that portion of the lands in said county of Chicot known and described as follows, to wit: The south half of the northwest quarter of section six (S. ½ N. W. ¼, sec. 6); the southwest quarter of sec. 6 (S. W. ¼, sec. 6); the northwest, quarter section seven (N. W. ¼ sec. 7), and the southwest quarter of sec. 7 (S. W. ¼, sec. 7), all in township 15 south, range 1 west, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said above mentioned and described premises, with the appurtenances, unto the said Benjamin H. Smith, his heirs and assigns, forever, as fully and absolutely as I, Samuel H. Holland, the sheriff aforesaid, may, can, or ought to by virtue of the said writ and of the statutes in such cases made and provided, grant, bargain, sell, convey, and
553 confirm the same.

In witness whereof I, the said sheriff, have hereunto set my hand and seal on this the 6th day of October, A. D. 1877.

S. H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

Be it remembered that on the 25th day of January, 1878, personally appeared before me S. H. Holland, sheriff of Chicot county, to me well known, and whose genuine signature appears above, and acknowledged that he executed the above and foregoing deed of conveyance for the uses, purposes, and considerations therein mentioned and set forth.

Witness my hand, as clerk of the circuit court for said county and State, this 25 January, 1878.

[SEAL.] H. W. GRAVES, *Clerk.*

Filed for record January 25, 1878, at 4½ p. m.

H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

554 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, circuit clerk and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the preceding three pages and the above writing on this page contain a full, true, and correct copy of a deed executed by S. H. Holland, as sheriff of Chicot county, Arkansas, to Benjamin H. Smith, as the same appears of record in my office in record book of deeds, etc., "V," pages 791 and 792.

Witness my hand and the seal of said court this 26th day of November, 1879.

[SEAL.] GEO. T. WILKINSON, *Cl'k, &c.*

555 *Exhibit "J" to the Deposition of Geo. T. Wilkinson.*

At the January term, 1878, of the Chicot circuit court, on the 2d day of February, 1878, a day of said term of said court, among others the following proceedings were had, viz:

ALLEN NUGENT & CO. *vs.* WILLIAM H. TODD.

This day came plaintiff-, by D. H. Reynolds, their attorney, as also the defendant, by his attorney, and the defendant saying nothing further in bar of plaintiffs' demand in this suit, and it appearing to the court that on the 18th day of June, 1877, the order of attachment in this cause had been duly levied upon the following lands situate in said county of Chicot, to wit, the undivided half interest in the south fractional half of S. ½ sec 4, S. W. ¼ diagonal ¼ of N. ½ of S. ½ sec. 4, sec. 5, S. W. ¼ sec. 8, E. ½ of N. W. ¼ sec. 8, W. ½ of S. E. ¼ sec. 8, and N. E. ¼ sec. 18, all in township 15 S., R. 1 W.,
556 and also in all of W. ½ N. W. ¼ sec. 8, in same township and range, said lands being part of Bellevue plantation, as the property of said defendant, to satisfy the debt of plaintiffs sued for in this cause, and it further appearing that plaintiffs' demand is based on the two promissory notes of defendant executed to one Isaac Cohen on January 23d, 1875, for $1,666.66 each, and bearing ten per cent. per annum interest from their date until paid, payable one and two years, respectively, from that date, and that same had

passed to plaintiffs as the legal owners and holders thereof, and that said indebtedness, now amounting to the sum of $4,341.64, is and has been a lien upon the interest of defendant in the lands levied on in this suit from June 8th, 1877, the date of said levy:

It is, therefore, adjudged by the court that said plaintiff- recover of said defendant the sum of four thousand three hundred
557 and forty-one and $\frac{64}{100}$ dollars, the amount of the said notes, including interest thereon, with interest on said sum of — at the rate of ten per cent. per annum from this date until paid, besides all their costs in this suit expended.

And it is further adjudged by the court that the property attached in this cause be sold at public auction, at the front door of the court-house in said county of Chicot, on Saturday, the 15th day of June, 1878, and that said sale be upon a credit of three months, and that a lien be retained upon said property to secure such purchase-money, and that plaintiffs have execution hereof.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court in and for
558 the county and State aforesaid, do hereby certify that the writing on the preceding two (2) pages contain a true and correct copy of the judgment in favor — Allen, Nugent & Co. *vs.* Wm. H. Todd, as the same appears of record in my office in circuit court Record "H," pages 351 and 352.

Witness my hand and the seal of the circuit court hereto affixed this 26th day of Nov., 1879.

[SEAL.] GEO. T. WILKINSON, *Cl'k, &c.*

Exhibit "K" to the Deposition of Geo. T. Wilkinson.

At the January term, 1878, of the Chicot circuit court, on the 2nd day of February, 1878, a day of said term of said court, among others, the following proceedings were had, viz:

THOS. H. ALLEN *vs.* WM. H. TODD.

559 This day this cause came up for consideration, and the defendant, having been duly summoned to appear in this cause, and being three times solemnly called, came not, but makes default; and it appearing to the court that the order of attachment herein had, on October 3d, 1877, been duly levied upon the following lands, situated in said county of Chicot, to wit: The undivided half interest in the S. fr'l $\frac{1}{2}$ of S. $\frac{1}{2}$, sec. 4; S. W. diagonal $\frac{1}{2}$ of N. $\frac{1}{2}$ of S. $\frac{1}{2}$, sec. 4, sec. 5; S. W. $\frac{1}{4}$, sec. 8; E. $\frac{1}{2}$, N. W. $\frac{1}{4}$, sec. 8; W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, sec. 8, and N. E. $\frac{1}{4}$, sec. 18, all in township 15 S., R. 1 W., and also in all of W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, sec. 8, in same township, said lands being part of Bellevue plantation, as the property of said defendant, to satisfy the debt of plaintiff sued for in this cause; and it further appearing that plaintiff's demand is based on a judgment rendered in the common pleas court No. 2, in the city of Philadelphia, in the State of Pennsylvania, against said defendant, on July

7, 1877, and in favor of Thomas H. Allen & Co., and that
560 said judgment had been duly assigned and transferred to plaintiff herein, which judgment was for the sum of $1,628.21 debt and $9.12 costs, and that said indebtedness is a lien upon the interest of defendant in the lands levied on in this suit from October 3d, 1877, the date of said levy:

It is therefore adjudged by the court that said plaintiff recover of said defendant the sum of sixteen hundred and eighty-three and $\frac{83}{100}$ dollars, the amount of said judgment with interest thereon, with legal interest on said sum from this date until paid, and the further sum of nine and $\frac{12}{100}$ dollars, the cost in said original suit, besides all the costs in this suit expended.

And it is further adjudged that the property attached in this cause be sold at public auction at the front door of the court-house, in said county of Chicot, on Saturday, the 15th day of June, 1878, and that said sale be upon a credit of three months, and that a lien be retained upon said property to secure such purchase-
561 money, and that plaintiff have execution hereof.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the writing on the preceding 2 pages contain- a true and correct copy of the judgment in favor of Thomas H Allen *vs.* Wm. H. Todd, as the same appears of record in my office in circuit court Record "H," pages 350 and 351.

Witness my hand and the seal of the circuit court hereto affixed, this 26th day of November, 1879.

[SEAL.] GEO. T. WILKINSON,
Clk Ct Ct, &c.

Exhibit "L" to Deposition of Geo. T. Wilkinson.

Execution.

STATE OF ARKANSAS, *County of Chicot:*

The State of Arkansas to the sheriff of Chicot county:

562 You are commanded that of the estate of Wm. H. Todd you cause to be made the sum of six thousand three hundred dollars, debt, and one hundred and seventeen & $\frac{60}{100}$ — damages, which James W. Cooper, late in our circuit court, recovered against said Wm. H. Todd, with interest at the rate of 6 per centum from the 16th day of January, 1878, until paid; also the sum of —— dollars, which was adjudged to the said James W. Cooper for his costs in that suit expended, and that you have said sums of money within sixty days to render to the said James W. Cooper debt, damages, interest, and costs aforesaid.

In testimony whereof I have hereto set my hand and official seal, at my office in the town of Lake Village, this 8th day of April, A. D. 1878.

[SEAL.] H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

563 Endorsed: Execution. $72. James W. Cooper, plaintiff, *vs.* Wm. H. Todd, defendant. Debt, $6,300.00; damages, $117.60; interest, 6% from Jan'y 16th, '78; costs cl'ks & taxes, $2.10; total, —. Entered in Docket Ex., page 352. Received 12 m., 8 day of April, 1878. S. H. Holland, sheriff. To she'ff of Chicot county. Returnable in 60 days from Ap'l 8, '78. Judgment Jan'y term, '78, c't c't. Rec. H, page 292.

I have, in pursuance of the within execution, levied upon all the right, title, and interest of Wm. H. Todd in and to the following-described lands, situate in Chicot county, to wit: All sec. (12) twelve, W. ½ sec. eleven (11), und. ½ S. ½ sec. eleven (11), sec. (14) fourteen, S. E. p't N. E. ¼ sec. ten (10); sec. twenty-three, 23; S. W ¼ sec. thirteen (13), E. ½ N. W. ¼ sec. twenty-four (24), E. ½ N. E. ¼ sec. 22, E. ½ S. E. ¼ sec. 15, N. ½ & S. E. ¼ sec. 13, S. ½ sec. 22, S. E. ¼ sec. 21, S. W. ¼ sec. 15, W. ½ S. E. ¼ sec. 15, sec. 27, N. ½ & S. W. ¼ sec. 26, N. E. ¼ sec. 17, S. W. ¼ sec. 9, S. E. ¼ sec. 10, all in town-
564 ship 15 S., R. 2 W., and S. ½ S. ½ sec. 4, S. diagonal ½ of N. ½ of S. ½ sec. 4, all section five (5), east half and southwest quarter of section six (6), S. ½ N. W. ¼ section six (6), all section (7) seven, W. ½ and W. ½ S. E. ¼ section eight (8), and N. E. ¼ section eighteen (18), in township 15 S., R. 1 W., and advertised the same to be sold on Monday, the 27th day of May, 1878; and I further return that on said 27th day of May I offered said lands for sale, and that at said sale Jas. F. Robinson, being the highest bidder for —, became the purchaser of the interest of said Wm. H. Todd in and to the below-mentioned parts of said lands, to wit:

Section five (5), S. fr'l ½ of section four (4), E. ½ and S. W. ¼ section six (6), S. ½ of N. W. ¼ section six (6), all section (7) seven, W. ½ of section eight (8), W. ½ of S. E. ¼ section eight (8), in township 15 S., range 1 west, and W. ½ of section twelve (12), W. ½ of E. ½ of section twelve (12), W. ½ and S. E. ¼ of section eleven (11), S. E. part of N. E. ¼ section ten (10), S. E. ¼ section ten (10), all section thirteen (13), all section fourteen (14) S. ½ section fifteen (15), S. E. ¼ section twenty-one (21), E. ½ N. E. ¼ section
565 twenty-two (22), S ½ section twenty-two (22), all section twenty-three (23), E. ½ N. W. ¼ section twenty-four (24), N. ½ and S. W. ¼ section twenty-six (26), all section twenty-seven (27), N. E. ¼ section seventeen (17), S. W. ¼ section nine (9), in township 15 S., range 2 west, for the total price and sum of fifty-three $\frac{75}{100}$ dollars ($53.75); and the said James F. Robinson has this day given his bond for said purchase-money; and I further return that at said sale B. H. Smith was the highest bidder for and became the purchaser of the interest of said Todd in and to the following parcels of said lands, to wit, N. E. ¼ of section eighteen (18), township 15 S., range one west, and E. ½ of E. ½ of section twelve, township 15 S., R. 2 west, for the total price and sum of seven $\frac{50}{100}$ dollars ($7.50), and has given his bond for said purchase-money, and this execution is hereby so returned; and I further return no other property of the defendant found in our county.

S. H. HOLLAND, *Sheriff.*

566 Costs:

Levy	75c.
Posting	75
Mileage	6 00
Return ex.	75
2% com.	1 20
Printer's fee	14 00
Cl'k's costs	2 10
	$25 55

Certificate of Purchase.

JAMES W. COOPER *vs.* WILLIAM H. TODD.

Execution. Certificate of purchase.

I, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that on the 8th day of April, 1878, there was issued, and to me directed and delivered by the clerk of the Chicot circuit court, a certain execution in favor of James W. Cooper and against Wm. H. Todd, and that, by virtue and authority of said execution, I did, on the 9th day of April, 1878, levy upon certain lands situate in said Chicot county, as is shown by the return on said execution, and that on the 27th day of May, 1878, after having duly advertised
567 said lands according to law, I did offer the same for sale at the time, place, and on the terms mentioned and set forth in said advertisements, and that at said sale James F. Robinson was the highest bidder for and became the purchaser of the right, title, and interest of said Wm. H. Todd in and to the following-described tracts or parcels of said lands for the respective prices set opposite each, to wit:

N. E. ¼, N. E. ¼, sec. 5, town. 15 S., R. 1 west	$1 00
N. W. ¼, N. E. ¼, " " "	50
S. W. ¼, N. E. ¼, " " "	50
S. E. ¼, N. E. ¼, " " "	50
N. E. ¼, N. W. ¼, " " "	50
N. W. ¼, N. W. ¼, " " "	25
S. W. ¼, N. W. ¼, " " "	50
S. E. ¼, N. W. ¼, " " "	25
N. E. ¼, S. W. ¼, " " "	25
N. W. ¼, S. W. ¼, " " "	25
S. W. ¼, S. W. ¼, " " "	25
S. E. ¼, S. W. ¼, " " "	25
N. E. ¼, S. E. ¼, " " "	25
N. W. ¼, S. E. ¼, " " "	25
S. W. ¼, S. E. ¼, " " "	25
S. E. ¼, S. E. ¼, sec. 5, town. 15 S., R. 1 west	25
568 S. diag. ½, N. ½, S. E. ¼, sec. 4, town. 15 S., R. 1 W.	50
N. E. ¼, S. W. ¼, sec. 4, town. 15 S., R. 1 W.	25
N. W. ¼, S. W. ¼, " " "	50
S. W. ¼, S. W. ¼, " " "	25

S. E. ¼, S. W. ¼,	sec. 4,	town. 15 S.,	R. 1 W.		25
S. W. ¼, S. E. ¼,	"	"	"		25
S. E. ¼, S. E. ¼,	"	"	"		25
N. E. ¼, N. E. ¼,	6,	"	"		25
N. W. ¼, N. E. ¼,	"	"	"		25
S. W. ¼, N. E. ¼,	"	"	"		25
S. E. ¼, N. E. ¼,	"	"	"		25
N. E. ¼, S. E. ¼,	"	"	"		25
N. W. ¼, S. E. ¼,	"	"	"		25
S. W. ¼, S. E. ¼,	"	"	"		25
S. E. ¼, S. E. ¼,	"	"	"		25
S. E. ¼, N. W. ¼,	"	"	"		25
S. W. ¼, N. W. ¼,	"	"	"		25
N. E. ¼, S. W. ¼,	"	"	"		25
N. W. ¼, S. W. ¼,	"	"	"		25
S. W. ¼, S. W. ¼,	"	"	"		25
S. E. ¼, S. W. ¼,	"	"	"		25
N. E. ¼, N. E. ¼,	7,	"	"		25
N. W. ¼, N. E. ¼,	"	"	"		25
S. W. ¼, N. E. ¼,	"	"	"		25
S. E. ¼, N. E. ¼,	"	"	"		25
N. E. ¼, N. W. ¼,	"	"	"		25
N. W. ¼, N. W. ¼,	"	"	"		25
S. W. ¼, N. W. ¼,	"	"	"		25
569 S. E. ¼ N. W. ¼,	"	"	"		25
N. E. ¼, S. E. ¼,	"	"	"		25
N. W. ¼. S. E. ¼,	"	"	"		25
S. W. ¼, S. E. ¼,	"	"	"		25
S. E. ¼, S. E. ¼,	"	"	"		25
N. E. ¼, S. W. ¼,	"	"	"		25
N. W. ¼, S. W. ¼	"	"	"		25
S. W. ¼, S. W ¼,	"	"	"		25
S. E. ¼, S. W. ¼,	"	"	"		25
N. E. ¼, N. W. ¼,	8	"	"		25
N. W. ¼, N. W. ¼,	"	"	"		25
S. W. ¼, N. W. ¼,	"	"	"		25
S. E. ¼, N. W. ¼,	"	"	"		25
N. W. ¼, S. E. ¼,	"	"	"		25
S. W. ¼, S. E. ¼,	"	"	"		25
N. E. ¼, S. W. ¼,	"	"	"		25
N. W. ¼, S. W. ¼,	"	"	"		25
S. W. ¼, S. W. ¼,	"	"	"		25
S. E. ¼, S. W. ¼,	"	"	"		25
N. W. ¼, N. E. ¼,	sec. 12,	town. 15 S,	R. 2 W.		75
S. W. ¼, N. E. ¼,	"	"	"		50
N. E. ¼, N. W. ¼,	"	"	"		25
N. W. ¼, N. W. ¼,	"	"	"		25
S. W. ¼, N. W. ¼,	"	"	"		25
S. E. ¼, N. W. ¼,	"	"	"		25
N. W. ¼, S. E. ¼,	"	"	"		25
S. W. ¼, S. E. ¼,	"	"	"		25
N. E. ¼, S.W. ¼,	"	"	"		25

570	N. W. ¼, S. W. ¼, sec.	11,	township 15	S., R. 2	W. 25
	S. W. ¼, S. W. ¼,	"	"	"	25
	S. E. ¼, S. W. ¼,	"	"	"	25
	N. E. ¼, N. W. ¼,	"	"	"	25
	N. W. ¼, N. W. ¼,	"	"	"	25
	S. W. ¼, N. W. ¼,	"	"	"	25
	S. E. ¼, N. W. ¼,	"	"	"	25
	N. W. ¼, S. W. ¼,	"	"	"	25
	N. E. ¼, S. W. ¼,	"	"	"	25
	S. W. ¼, S. W. ¼,	"	"	"	25
	S. E. ¼, S. W. ¼,	"	"	"	25
	N. E. ¼, N. E. ¼,	10,	"	"	25
	S. E. ¼, N. E. ¼,	"	"	"	25
	S. W. ¼, N. E. ¼,	"	"	"	25
	N. E. ¼, S. E. ¼,	"	"	"	25
	N. W. ¼, S. E. ¼,	"	"	"	25
	S. W. ¼, S. E. ¼,	"	"	"	25
	S. E. ¼, S. E. ¼,	"	"	"	25
	N. E. ¼, N. E. ¼,	13,	"	"	25
	N. W. ¼, N. E. ¼,	"	"	"	25
	S. W. ¼, N. E. ¼,	"	"	"	25
	S. E. ¼, N. E. ¼,	"	"	"	25
	N. E. ¼, N. W. ¼,	"	"	"	25
	N. W. ¼, N. W, ¼,	"	"	"	25
	S. W. ¼, N. W, ¼,	"	"	"	25
	S. E. ¼, N. W. ¼,	"	"	"	25
	N. E. ¼, S. E. ¼,	"	"	"	25
	N. W. ¼, S. E. ¼,	"	"	"	25
571	S. W. ¼, S. E. ¼,	"	"	"	25
	S. E. ¼, S. E. ¼, sec.	13,	town. 15	S., R. 2	W. 25
	N. E. ¼, S. W. ¼,	"	"	"	25
	N. W. ¼, S. W. ¼,	"	"	"	25
	S. W. ¼, S. W. ¼,	"	"	"	25
	S. E. ¼, S. W. ¼,	"	"	"	25
	N. E. ¼, N. E, ¼,	14	"	"	25
	N. W. ¼, N. E. ¼,	"	"	"	25
	S. W. ¼, N. E. ¼,	"	"	"	25
	S. E. ¼, N. E. ¼,	"	"	"	25
	N. E. ¼, N. W. ¼,	"	"	"	25
	N. W. ¼, N. W. ¼,	"	"	"	25
	S. W. ¼, N. W. ¼,	"	"	"	25
	S. E. ¼, N. W. ¼,	"	"	"	25
	N. E. ¼, S. E. ¼,	"	"	"	25
	N. W. ¼, S. E. ¼,	"	"	"	25
	S. W. ¼, S. E. ¼,	"	"	"	25
	S. E. ¼, S. E. ¼,	"	"	"	25
	N. E. ¼, S. W. ¼,	"	"	"	25
	N. W. ¼, S. W. ¼,	"	"	"	25
	S. W. ¼, S. W. ¼,	"	"	"	25
	S. E. ¼, S. W. ¼,	"	"	"	25
	N. E. ¼, N. E. ¼,	23	"	"	25

	N. W. ¼, N. E. ¼,	sec. 23,	town. 15 S.,	R. 2 W.		25
	S. W. ¼, N. E. ¼,	"	"	"		25
	S. E. ¼, N. E. ¼,	"	"	"		25
	N. E. ¼, N. W. ¼,	"	"	"		25
	N. W. ¼, N. W. ¼,	"	"	"		25
	S. W. ¼, N. W. ¼,	"	"	"		25
572	S. E. ¼, N. W. ¼,	"	"	"		25
	N. E. ¼, S. E. ¼,	"	"	"		25
	N. W. ¼, S. E. ¼,	"	"	"		25
	S. W. ¼, S. E. ¼,	"	"	"		25
	S. E. ¼, S. E. ¼,	"	"	"		25
	N. E. ¼, S. W. ¼,	"	"	"		25
	N. W. ¼, S. W. ¼,	"	"	"		25
	S. W. ¼, S. W. ¼,	"	"	"		25
	S. E. ¼, S. W. ¼,	"	"	"		25
	N. E. ¼, N. W. ¼,	24,	"	"		25
	S. E. ¼, N. W ¼,	"	"	"		25
	N. E. ¼, N. E. ¼,	22,	"	"		25
	S. E. ¼, N. E. ¼,	"	"	"		25
	N. E. ¼, S. E. ¼,	"	"	"		25
	N. W. ¼, S. E. ¼,	"	"	"		25
	S. W. ¼, S. E. ¼,	"	"	"		25
	S. E. ¼, S. E. ¼,	"	"	"		25
	N. E. ¼, S. W. ¼,	"	"	"		25
	N. W. ¼, S. W. ¼,	"	"	"		25
	S. W. ¼, S. W. ¼,	"	"	"		25
	S. E. ¼, S. W. ¼,	"	"	"		25
	N. E. ¼, S. E. ¼,	15,	"	"		25
	N. W. ¼, S. E. ¼,	"	"	"		25
	S. W. ¼, S. E. ¼,	"	"	"		25
	S. E. ¼, S. E. ¼,	"	"	"		25
	N. E. ¼, S. W. ¼,	"	"	"		25
	N. W. ¼, S. W. ¼,	"	"	"		25
	S. W. ¼, S. W. ¼,	"	"	"		25
573	S. E. ¼, S. W. ¼,	"	"	"		25
	N. E. ¼, S. E. ¼,	21,	"	"		25
	N. W. ¼, S. E. ¼,	"	"	"		25
	S. W. ¼, S. E. ¼,	"	"	"		25
	S. E. ¼, S. E. ¼,	"	"	"		25
	N. E. ¼, N. E. ¼,	27,	"	"		25
	N. W. ¼, N. E. ¼,	"	"	"		25
	S. W. ¼, N. E. ¼,	"	"	"		25
	S. E. ¼, N. E. ¼,	"	"	"		25
	N. E. ¼, N. W. ¼,	"	"	"		25
	N. W. ¼, N. W. ¼,	"	"	"		25
	S. W. ¼, N. W. ¼,	"	"	"		25
	S. E. ¼, N. W. ¼,	"	"	"		25
	N. E. ¼, S. E. ¼,	"	"	"		25
	N. W. ¼, S. E. ¼,	"	"	"		25
	S. W. ¼, S. E. ¼,	"	"	"		25
	S. E. ¼, S. E. ¼,	"	"	"		25

N. E. ¼, S. W. ¼,	sec. 27,	town. 15 S.,	R. 2 W.		25
N. W. ¼, S. W. ¼,	"	"	"		25
S. W. ¼, S. W. ¼,	"	"	"		25
S. E. ¼, S. W. ¼,	"	"	"		25
N. E. ¼, N. E. ¼,	26,	"	"		25
N. W. ¼, N. E. ¼,	"	"	"		25
S. W. ¼, N. E. ¼,	"	"	"		25
S. E. ¼, N. E. ¼,	"	"	"		25
N. E. ¼, N. W. ¼,	"	"	"		25
N. W. ¼, N. W. ¼,	"	"	"		25
S. W. ¼, N. W. ¼,	"	"	"		25
574 S. E. ¼, N. W. ¼,	"	"	"		25
N. E. ¼, S. W. ¼,	"	"	"		25
N. W. ¼, S. W. ¼,	"	"	"		25
S. W. ¼, S. W. ¼,	"	"	"		25
S. E. ¼, S. W. ¼,	"	"	"		25
N. E. ¼, N. E. ¼,	17,	"	"		25
S. E. ¼, N. E. ¾,	"	"	"		25
N. W. ¼, N. E. ¼,	"	"	"		25
S. W. ¼, N. E. ¼,	"	"	"		25
N. E. ¼, S. W. ¼,	9,	"	"		25
N. W. ¼, S. W. ¼,	"	"	"		25
S. W. ¼, S. W. ¼,	"	"	"		25
S. E. ¼, S. W. ¼,	"	"	"		25
					$53 75

Being a total price and sum of fifty-three $\frac{75}{100}$ dollars, for which said purchase-money the said James F. Robinson has given his bond, and I do hereby so certify.

Given under my hand, as such sheriff aforesaid, this 27th day of May, 1878.

S. H HOLLAND, *Sheriff.*

Certificate of Purchase.

JAMES W. COOPER *vs.* WM. H. TODD.

In consideration of the sum of three hundred and eighty-one $\frac{25}{100}$ dollars to me in hand paid by Benjamin H. Smith, I do
575 hereby bargain, sell, and assign to said Smith the annexed within and foregoing certificate of purchase, together with all my right, title, interest, claim, and property in and to the lands described and set out in said certificate of purchase.

Witness my hand this November 2, 1878.

JAMES F. ROBINSON.

Certificate of Purchase.

JAMES W. COOPER *vs.* WM. H. TODD.

Execution.

I, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that on the 8th day of April, 1878, there was issued and to me directed and delivered by the clerk of the Chicot circuit court a certain execution in favor of James W. Cooper and against Wm. H. Todd, and that, by virtue and authority of said execution, I did, on the 9th day of April, 1878, levy upon certain lands situate in said county of Chicot, as is shown by the return on said execution, and that on the 27th day of May, 1878, after having duly
576 advertised said lands according to law, I did offer the same for sale at the time, place, and on the terms mentioned and set forth in said advertisement, and that at said sale Benjamin H. Smith was the highest bidder for and became the purchaser of the right, title, and interest of said Wm. H. Todd in and to the following-described tracts or parcels of said lands for the respective prices set opposite each, to wit:

N. E. ¼, N. E. ¼,	sec. 18,	town. 15 S.,	R. 1 W.	----------	$2	00
N. W. ¼, N. E. ¼,	" "	" "	"	----------		50
S. W. ¼, N. E. ¼,	" "	" "	"	----------		50
S. E. ¼, N. E. ¼,	" "	" "	"	----------		50
N. E. ¼, N. E. ¼,	" 12,	" "	2	----------	1	00
S. E. ¼, N. E. ¼,	" "	" "	"	----------	1	00
N. E. ¼, S. E. ¼,	" "	" "	"	----------	1	00
S. E. ¼, S. E. ¼,	" "	" "	"	----------	1	00
					$7	50

Being a total price and sum of seven $\frac{50}{100}$ dollars, and that said B. H. Smith has this day given his bond for said purchase-money, and I do hereby so certify.

S. H. HOLLAND, *Sheriff.*

577 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the Chicot county court in and for the county and State aforesaid, do hereby certify that the preceding pages contain a true and correct copy of the execution issued out of this court on the judgment in favor of James W. Cooper and against Wm. H Todd, rendered in said court, and the sheriff's return thereon and certificates of purchase executed by the sheriff to B. H. Smith for a portion of the lands purchased at the sale under said execution, and to J. F. Robinson for a portion of the lands purchased at said sale, as the same appear of file in my office.

Witness my hand and the seal of said court hereto attached this 26 day of November, 1879.

[SEAL.] GEO. T. WILKINSON, *Cl'k, &c.*

578 *Exhibit M to the Deposition of Geo. T. Wilkinson.*

At the July term, 1876, of the Chicot circuit court, on the 21 day of July, 1876, a day of said term of said court, among others, the following proceedings were had, viz:

JUREY & GILLIS, Plaintiffs, *against* WM. H. TODD, Defendant.

On this day came both parties, by their attorneys, and defendant files his bond releasing the property attached, which bond is approved, and the defendant consenting that judgment shall be rendered against him for the amount sued for, it is therefore ordered and adjudged that the plaintiffs have and recover of and from the defendants, W. H. Todd, and Benj. H. Smith and Isaac Cohen, sureties on the bond of defendant, the sum of fourteen hundred and *and*
sixty-nine $\frac{66}{100}$ dollars ($1,469.66), being the principal and interest
to date, with interest on said sum at 8 per cent. per annum
579 from this date, besides all costs herein, with stay of execution until Dec. 1st, 1876, and all further stay waived.

Endorsed: Satisfied in full. Jurey & Gillis, by D. H. Reynolds. April 2d, 1877. H. W. Graves, clerk, by Geo. T. Wilkinson, D. C.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing page and the above writing on this page contain a true and correct copy of a judgment rendered at the July term, 1876, in favor — Jurey & Gillis against Wm. H. Todd, Benjamin H. Smith, and Isaac Cohen, together with the endorsement thereon, as the same appears of record in my office in record book of Chicot county circuit court "H," page 92.

Witness my hand and the seal of said court hereto affixed this 26th day of Nov., 1879.

[SEAL.] GEO. T. WILKINSON, *Cl'k, &c.*

580 *Exhibit "N" to the Deposition of Geo. T. Wilkinson.*

Chicot Circuit Court. January Term, 1878.

JAMES W. COOPER, Plaintiff, *against* WM. H. TODD, Defendant.

Complaint at law.

The plaintiff, James W. Cooper, states that on the 24th day of September, 1877, in the court of common pleas No. one for the county of Philadelphia, State of Pennsylvania, a court of general jurisdiction, he obtained judgment, duly given, against the defendant, Wm. H. Todd, for the sum of six thousand three hundred dollars. A duly certified copy of said judgment and the record of said court is herewith filed and asked to be taken as part of this complaint. Plaintiff further states that no part of said judgment has been paid. Wherefore he prays judgment for said sum of six thou-

sand three hundred dollars and interest thereon from said 24th Sept., 1877, and other proper relief.

JAMES F. ROBINSON,
Att'y for Plaintiff.

581 I undertake that plaintiff shall pay to the defendant, William H. Todd, and to the officers of the court all costs that shall accrue to them in this action, either in this court or in any other court to which it may be carried.

J. F. ROBINSON.

Filed and appearance of def't entered in open court Jan'y 16th, 1878.

H. W. GRAVES, *Cl'k*,
By GEO. T. WILKINSON, *D. C.*

Exemplification.

STATE OF PENNSYLVANIA, } *sct:*
Philadelphia County, }

Among the records and proceedings of the court of common pleas No. one for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 40, September term, 1877, to wit:

Docket Entries. September Term, 1877.

JAMES W. COOPER
vs. } 40.
WILLIAM H. TODD.

582 Judgment entered on a bond and warrant of att'y, dated August 18, 1876, for $6,300.00, conditioned for the payment of $3,150.00 in five years from date, with interest payable half-yearly, together with taxes, &c., and in default of payment of interest for 30 days after any half-yearly payment shall — due, or taxes, &c., for 30 days after notice in writing, the whole debt, &c., may be recoverd at once, with an att'y's commission of five per cent.

Sept. 24, 1877.—Judgment.

Judgment Index.

Defendant, Todd, William H.; plaintiff, Jas. W. Cooper; court, No. 1; term, S. 77; No., 40, D. S. B.; date, 1877, Sept. 24; amount, $6,300.00.

Phila. Co. costs:

Att'y & ent'g	$4 12½
Cr. and sol.	25
Record	2 00
	$6 37½

To William Nelson West, Esq., attorney of the court of common pleas at Philadelphia, in the county of Philadelphia, in the State of Pennsylvania, or to any other attorney of the said
583 court or any court there or elsewhere:

Whereas I, William H. Todd, of the city of Philadelphia, gentleman, in and by a certain obligation bearing even date herewith, do stand bound unto James W. Cooper, of the said city, manufacturer, in the sum of six thousand three hundred dollars, lawful money of the United States of America, conditioned for the payment of the just sum of three thousand one hundred and fifty dollars, lawful money as aforesaid, in five years from the date thereof, together with interest thereon, payable half-yearly, at the rate of six per cent. per annum until such time as a higher rate becomes lawful, and immediately thereafter at the highest rate, not exceeding — per cent., legally chargeable, together with all taxes and charges in nature thereof that may be laid or levied upon said obligation or upon the accompanying indenture of mortgage or the principal or interest moneys thereby secured immediately upon their assessment:
584 Provided, however, and it is thereby expressly agreed, That if at any time default shall be made in payment of interest as aforesaid for the space of thirty days after any half-yearly payment thereof shall fall due, or in the payment of any tax or charge as aforesaid for the space of thirty days after notice in writing of its assessment shall be left upon the premises described in the accompanying indenture of mortgage, then and in such case the whole principal debt aforesaid shall, at the option of the said obligee, his executors, administrators, or assigns, become due and payable immediately, and payment of said principal debt and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary notwithstanding: And provided further, however, and it is thereby expressly agreed, That if at any time thereafter, by reason of any default in payment, either of said principal sum at maturity or of said interest or of taxes and charges within the time specified, a writ of *fieri facias* is properly issued upon
585 the judgment obtained upon said obligation or by virtue of this warrant, or a writ of *scire facias* is properly issued upon the accompanying indenture of mortgage, an attorney's commission for collection, viz., five per cent. shall be payable and shall be recovered, in addition to all principal, interest, and taxes then due, besides costs of suit:

These are to desire and authorize you or any of you to appear for me, my heirs, executors, or administrators, in the said court or elsewhere in an action of debt there or elsewhere brought or to be brought against me, my heirs, executors, or administrators, at the suit of the said obligee, his executors, administrators, or assigns, on the said obligation, as of any term or time, past, present, or any subsequent term or time there or elsewhere to be held, and confess judgment thereupon against me, my heirs, executors, or administrators, for the sum
586 of six thousand three hundred dollars, lawful money of the United States of America, debt, besides costs of suit and an

attorney's commission of five per cent. in case payment has to be enforced by process of law as aforesaid by *non sum informatus, nihil dicit*, or otherwise, as to you shall seem meet; and for your or any of your so doing this shall be your sufficient warrant; and I do hereby, for myself, my heirs, executors, and administrators, remise, release, and forever quitclaim unto the said obligee, his certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever in the entering of the said judgment, or any process or proceedings thereon or thereto or anywise touching or concerning the same.

In witness whereof I have hereunto set my hand and seal this eighteenth day of August, in the year of our Lord one thousand eight hundred and seventy-six.

WM. H. TODD. [SEAL.]

587 Sealed and delivered in the presence of us—
JOHN F. CARLEN.
WM. R. NICHOLSON.

Endorsed: Filed Sept. 24, 1877.

THE COMMONWEALTH OF PENNSYLVANIA, } ss:
County of Philadelphia, }

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the foregoing is a true copy of the whole record in the cause wherein James W. Cooper is plaintiff and William H. Todd is defendant, of September term, 1877, numbered 40, as full, entire, and complete as the same remains on file in court of common pleas No. one for the county of Philadelphia in the case there stated.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 27th day of September in the year
588 of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] WILLIAM B. MANN,
Prothonotary.

COUNTY OF PHILADELPHIA, ss:

I, Joseph Allison, president judge of the court of common pleas No. one for the county of Philadelphia, do certify that the foregoing record and attestation made by William B. Mann, Esquire, prothonotary of the said court, whose name is thereto subscribed and seal of office affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 27 day of September in the year of our Lord one thousand eight hundred and seventy-seven.

JOSEPH ALLISON.

COUNTY OF PHILADELPHIA, *ss:*

I, William B. Mann, Esquire, prothonotary of the several
589 courts of common pleas numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the Honorable Joseph Allison, by whom the foregoing attestation was made and whose name is thereto subscribed, was at the time of making thereof and still is president judge of the court of common pleas No. one for the county of Philadelphia, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judication as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said courts this 27th day of September, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] WILLIAM B. MANN,
Prothonotary.

590 Know all men by these presents that I, William H. Todd, of the city of Philadelphia, gentleman (hereinafter called the obligor), am held and firmly bound unto James W. Cooper, of the said city, manufacturer (hereinafter called the obligee), in the sum of six thousand three hundred dollars, lawful money of the United States of America, to be paid to the said obligee, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I do bind and oblige myself, my heirs, executors, and administrators, and every of them, firmly by these presents.

Sealed with my seal; dated the eighteenth day of August, in the year of our Lord one thousand eight hundred and seventy-six (1876).

The condition of this obligation is such that if the above-bounden obligor, his heirs, executors or administrators, or any of them,
591 shall and do well and truly pay or cause to be paid unto the above-named obligee, his certain attorney, executors, administrators, or assigns, the just sum of three thousand one hundred and fifty dollars, lawful money as aforesaid, in five years from the date hereof, together with interest thereon, payable half-yearly, at the rate of six per cent. per annum until such time as a higher rate becomes lawful, and immediately thereafter at the highest rate, not exceeding seven per cent., legally chargeable, together with all taxes and charges in nature thereof that may be laid or levied upon this obligation or upon the accompanying indenture of mortgage or the principal or interest moneys hereby secured immediately upon their assessment without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue: Provided, however, and it is hereby
592 expressly agreed, That if at any time default shall be made in payment of interest as aforesaid for the space of thirty days after any half-yearly payment thereof shall fall due, or in the payment of any tax or charge as aforesaid for the space of thirty days after notice in writing of its assessment shall be left upon the premises described in the accompanying indenture of mortgage, then and in such case the whole principal debt aforesaid shall, at the op-

tion of the said obligee, his executors, administrators, or assigns, become due and payable immediately, and payment of said principal debt and all interest thereon may be enforced and recovered at once, anything herein contained to the contrary notwithstanding.

And provided further, however, and it is hereby expressly agreed, That if at any time hereafter, by reason of any default in
593 payment either of said principal sum at maturity or any of said interest, or of taxes and charges, within the time specified, a writ of *fieri facias* is properly issued upon the judgment obtained upon the obligation, or by virtue of the warrant of attorney hereto attached, or a writ of *scire facias* is properly issued upon the accompanying indenture of mortgage, an attorney's commission for collection, viz., five per cent., shall be payable and shall be recovered in addition to all principal, interest, and taxes then due, besides costs of suit.

WM. H. TODD. [SEAL.]

Sealed and delivered in presence of us—

JOHN T. CULEN.
WM. R. NICHOLSON.

Endorsed: Entered in the — of the court of common pleas for the county of Philadelphia this 24th day of Sept., 1877. James W. Fletcher, per proth'y.

594 Be it remembered that at the regular January term, 1878, of the circuit court of Chicot county, Arkansas, begun and held at Lake Village, Arkansas, and on the third day of said term, the same being Jan'y 16th, 1878, among others, the following proceedings were had, to wit:

JAMES W. COOPER
vs. } 1049.
WM. H. TODD.

Comes the plaintiff, by his att'y, and files his complaint, and also comes the defendant, Wm. H. Todd, as well in his own proper person as by att'y, and enters his appearance in this cause, & consenting that judgment shall be entered against him herein for the sum of six thousand three hundred dollars, with interest thereon from the 24th day of September, 1877:

It is therefore considered and adjudged by the court that the plaintiff, James W. Cooper, do have and recover of and from
595 the defendant, William H. Todd, the sum of six thousand three hundred dollars for his debt and the further sum of one hundred and seventeen dollars and sixty cents for his damages, making in all the sum of $6,417.60, besides his costs herein expended, and that he have execution therefor.

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I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder within and for the county of Chicot, State of Arkansas, do hereby certify that the above writing on this page and the
596 foregoing 13 pages contain a true and correct copy of the proceedings of the case of James W. Cooper against William H. Todd, as the same appear of file & record in my office.

Witness my hand and the seal of said court hereto affixed this 8th day of Dec., 1883.

[SEAL.] GEO. T. WILKINSON, *Cl'k*,
By C. L. MEAD, *D. C.*

Exhibit "O" to Deposition of Geo. T. Wilkinson.

Mortgage. William H. Todd to Benjamin H. Smith.

This indenture, made this 22d day of August, in the year of our Lord one thousand eight hundred and seventy-six (1876), between William H. Todd, of the city of Philadelphia, gentleman, of the one part, and Benjamin H. Smith, of Chicot county, Arkansas, of the other part.

Whereas the said W. H. Todd is now indebted to the said
597 Benjamin H. Smith, and to secure the payment of the same hath agreed to execute and deliver a chattel mortgage for five thousand dollars, secured upon the personal property of the said W. H. Todd, now on Yellow Bayou and Bellevue plantations:

Now, this indenture witnesseth: That the said William H. Todd, as well for and in consideration of the sum aforesaid of five thousand dollars, and for the better securing the payment of the same unto the said Benjamin H. Smith, as for and in consideration of the further sum of one dollar unto him well and truly paid by Benjamin H. Smith, hath and by these presents doth grant, bargain, and sell & transfer and set over unto the said Benjamin H. Smith, his heirs, executors, administrators, and assigns, all the following personal property of the said William H. Todd now on or about the
598 Yellow Bayou plantation owned and occupied by the said William H. Todd, viz:

Fifteen mules, two horses, fifteen plows, six off-bars, all the hoes, axes, and spades, gearing for about fifteen mules for wagons and harness, one carriage and harness, four bedsteads and bedding, two

bureaus, two tables, and all articles of furniture—household and kitchen—and utensils, all carpenter — and blocks with tools and other implements of farming or planting on said plantation, and also all the one undivided half part of him, the said William H. Todd, of, in, and to all the following personal property now on or about the Bellevue plantation now owned jointly by the said William H. Todd & Benjamin H. Smith and occupied by the said Benjamin H. Smith, viz: Sixteen mules and all the farming utensils of any description on said premises, and also all the right,
599 title, and interest of said William H. Todd in and to the growing crops of corn and cotton and the seed of the cotton made or to be made on Yellow Bayou and Bellevue plantations for the year 1876, each of said places being in Chicot county, Ark., with the full right to manage the picking, ginning, and shipping of said crops of cotton and corn on both of said plantations, and dispose of the proceeds thereof as fully as I could do if personally present: Provided, always, nevertheless, That if the said William H. Todd, his executors, administrators, or assigns, do and shall well and truly pay or cause to be paid unto the said Benjamin H. Smith, his executors, administrators, or assigns, the aforesaid debt or sum of five thousand dollars without any fraud or further delay, that then and from thenceforth this present indebtedness of mortgage shall cease, deter-
600 mine, and become void, anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

In testimony whereof the said William H. Todd hath hereunto set his hand and seal. Dated the day and year aforesaid.

WILLIAM H. TODD. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. R. NICHOLSON.
J. W. HORNER.

COMMONWEALTH OF PENNSYLVANIA,
City and County of Philadelphia:

On this 22 day of August, A. D. 1876, before me, the subscribed, a notary public for the State of Pennsylvania, residing in the city of Philadelphia, personally appeared the above-named Wm. H. Todd, and in due form of law acknowledged *that* the foregoing indenture to be his act and deed, and desired the same might be so certified and recorded as such.

Witness my hand and official seal this day and year afore-
601 said.

W. R. NICHOLSON,
Notary Public.

File- for record Aug. 31, 1876, and recorded Sept. 20th, A. D. 1876.
A. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the preceding three pages & the above writing on this page contain a true, correct copy of the instrument executed by and between the parties therein mentioned, as the same appear of record in Record Book of Deeds, &c., T, on page 485 in my office.

Witness my hand and official seal hereto affixed this the 3d day of Sept., 1883.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

602 *Exhibit P to the Deposition of Geo. T. Wilkinson.*

Mortgage. William H. Todd to Benjamin H. Smith.

STATE OF PENNSYLVANIA, *Philadelphia County:*

Whereas I am indebted unto Benjamin H. Smith in the sum of four thousand dollars for money advanced and for goods, wares, and merchandise heretofore bought by me from the said Benjamin H. Smith; and whereas I desire to obtain other and further advances of money and purchase other goods, wares, and merchandise for the purpose of enabling me to carry on the business of planting and cultivating a crop of corn and cotton on the Yellow Bayou and Bellevue plantations, in Chicot county, Arkansas, during the present year, 1877, and I desire to secure to the said Benjamin H. Smith the full and prompt payment of all indebtedness that may be now owing by me to him, as above stated, as well as all indebted-
603 ness that may be hereafter created by me to him before the first day of February, 1878; therefore

Know all men by these presents that I, William H. Todd, of said county and State aforesaid, hath this day granted, bargained, and sold, and do by these presents grant, bargain, and sell, unto the said Benjamin H. Smith my entire interest, of every kind and nature whatsoever, either as the same is now held by me or as it may be hereafter acquired, in a crop of cotton or corn now growing or that may hereafter be growing, during the year 1877, on said Yellow Bayou and Bellevue plantations, said crop consisting of about 300 acres in corn, more or less, & 800 acres in cotton, more or less:

To have and to hold unto the said Benjamin H. Smith, his heirs and assigns, forever, upon the condition, however, that if I pay or cause to be paid to the said Benjamin H. Smith, on or before
604 the first day of February, 1878, all indebtedness that may be due by me to him, then this obligation shall be void; otherwise to remain in full force and virtue; and I do further agree to deliver to the said Benjamin H. Smith said crop of cotton as fast as the same is prepared for market, the same to be by them shipped to the city of New Orleans and there sold in the usual course of trade and the proceeds applied to the payment of the indebtedness hereinbefore mentioned until the whole said indebtedness is finally paid off and discharged, and should I at any time before the first day of February, 1878, fail or refuse to deliver to the said Benjamin H.

Smith crop of cotton or any part thereof according to the above agreement, then the said Benjamin H. Smith shall have the right, and I hereby expressly authorize —, to take possession of said crop of cotton and corn and ship the same to market, as above
605 stated, and if any part of said cotton shall not be prepared for market the said Benjamin H. Smith is authorized and directed to supply the necessary labor to so prepare the same, and the cost thereof shall be charged to me by him and deducted from proceeds of said cotton, and should the proceeds of said cotton not be sufficient to pay said mortgage indebtedness then the said Benjamin H. Smith is hereby authorized and directed to take possession of the other personal property hereinbefore conveyed and sell the same, after giving ten days' notice of the said time and place of said sale by written notices posted in three of the most public places in Chicot county, Arkansas, and the proceeds of said sale shall be applied to the payment of whatever balance may be remaining due on said indebtedness.

In testimony whereof I have hereunto set my hand and affixed my seal this twenty-seventh day of June, A. D. 1877.

WM. H. TODD. [SEAL.]

606 Attest: M. A. BYRNE.
E. C. ENGLISH.

STATE OF PENNSYLVANIA, *County of Philadelphia:*

Before me, the undersigned, a notary public of the county and State aforesaid, personally appeared William H. Todd, grantor in the above conveyance, who, being personally well known to me, acknowledged that he executed the same for the uses, purposes, and considerations therein mentioned and set forth.

In testimony whereof I have hereunto set my hand, as such notary, this the 27th day of June, A. D. 1877.

[SEAL.] M. A. BYRNE,
Notary Public.

Filed for record July 10th, 1877. Recorded August 13th, 1877.
H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON.

607 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court & *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the preceding 4 pages contain a true and correct copy of an instrument executed by and between the parties therein mentioned as the same appears of record in Record Book of Deeds, &c., U, page 570, in my office.

Witness my hand & official seal hereto affixed this 3d day of Sept., 1883.

[SEAL.] GEO. T. WILKINSON, *Clk.*

Exhibit "Q" to the Deposition of Geo. T. Wilkinson.

Chattel mortgage. William H. Todd to Benj. H. Smith.

608 STATE OF PENNSYLVANIA, *Philadelphia County:*

Whereas I am indebted unto Benj. H. Smith in the sum of two thousand dollars for money advanced and goods, wares, and merchandise heretofore bought by me from the said Benj. H. Smith; and whereas I desire to obtain other and further advances of money and to purchase other goods, wares, and merchandise for the purpose of enabling me to carry on the business of planting and cultivating a crop of corn and cotton on the Yellow Bayou plantation, in Chicot county, Arkansas, during the present year, 1878, and I desire to secure to said Benj. H. Smith the full and prompt payment of all indebtedness that may be now owing by me to B. H. Smith, as above stated, as well as all indebtedness that may hereafter — created by me to said Smith, before the first day of January, 1879: Therefore, know all men by these presents that I, William H. Todd, of the county of Philadelphia, State
609 aforesaid, hath this day granted, bargained, and sold, and do by these presents grant, bargain, and sell, unto the said Benj. H. Smith — entire interest of every kind and nature whatsoever, either as the same is now held by me or as it may hereafter be acquired, in a crop of cotton and corn now growing or that may hereafter be growing during the year 1878 on said Yellow Bayou plantation, said crop consisting of about 500 acres in corn, more or less, and 500 acres in cotton, more or less:

To have and to hold *unto* the said cotton & corn to said Smith, his heirs and assigns, forever, upon the condition, however, that if I pay or cause to be paid to the said Smith on or before the first day of Jan'y, 1879, all indebtedness that may be due by said Todd to s'd Smith, then this obligation shall be void; otherwise to remain
610 in full force and virtue; and I do further agree to deliver to the said Smith said crop of cotton as fast as the same is prepared for market, the same to be by them shipped to the city of New Orleans and there sold in the usual course of trade, and the proceeds applied to the payment of the indebtedness hereinbefore mentioned until the whole said indebtedness is finally paid off and discharged; and should I at any time before the said first day of Jan'y, 1879, fail or refuse to deliver to said Smith said crop of cotton, or any part thereof, according to the above agreement, then the said Smith shall have the right, and — hereby authorized, to take possession of said crop of cotton and corn and ship the same to market, as above stated; and if any part of said cotton crop shall not be prepared for market the said Smith is authorized and directed to employ the necessary labor to so prepare the same, and the cost
611 thereof shall be charged to me by Smith and deducted from the proceeds of said cotton.

In testimony whereof I have hereunto set my hand and affixed my seal this the 6th day of March, A. D. 1878.

WM. H. TODD. [SEAL.]

Attest: THOS. KANE.
M. A. BYRNE.

STATE OF PENNSYLVANIA, *County of Philadelphia:*

Before the undersigned, a notary public of the county and State aforesaid, personally appeared William H. Todd, grantor in the above conveyance, who, being personally known to me, acknowledged that he executed the same for the uses and purposes and considerations therein mentioned and set forth.

In witness whereof I have hereunto set my hand, as such notary public, on this the 6th day of March, A. D. 1878.

[SEAL.] M. A. BYRNE,
Notary Public.

612 Filed for record March 14th, 1878.

H. W. GRAVES, *Clk.*

Recorded M'ch 28th, 1878.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the preceding 3 pages contain a true and correct copy of an instrument executed by and between the parties therein mentioned as the same appears of record in Record Book of Deeds, &c., "V," on page 378, &c., in my office.

Witness my hand and official seal hereto affixed this the 3d day of September, 1883.

[SEAL.] GEO. T. WILKINSON, *Clk.*

613 *Exhibit R to the Deposition of Geo. T. Wilkinson.*

Deed of conveyance. Wm. H. Todd & wife to Benjamin H. Smith.

Deed. "Conveyance."

[On margin.]

APRIL 29th, 1873.

The full amount of the consideration of the within deed, W. H. Todd & wife to B. H. Smith, has been fully paid and settled.

WM. H. TODD.

This deed of conveyance, made the 29th, twenty-ninth, day of October, in the year of our Lord one thousand eight hundred and sixty-nine, at the county of Chicot, in the State of Arkansas, by William H. Todd and Amanda M. Todd, his wife, of the first part, to Benjamin H. Smith, of said county, of the second part, witnesseth: That for and in consideration of the sum of nineteen thousand two hundred and fifty dollars, whereof the sum of five thousand two hundred and fifty dollars is unto him, the said Wm. H. Todd, in hand paid at and before the ensealing and delivery of these presents, and the receipt of so much is hereby acknowledged, and the
614 remaining sum of fourteen thousand dollars is by the said Benjamin H. Smith secured to be paid to him, the said William H. Todd, doth hereby grant, bargain, and sell unto the said Benjamin H. Smith the one equal undivided half of the following-

described lands and tenements lying and situate in the said county of Chicot and constituting what is known as the Bellevue plantation—that is to say:

Of the south half of the south half of section four, containing 160 acres.

Of the south diagonal half of the north half of the south half of section four, containing 80 acres.

Of fractional section 5, containing 648.71 acres.

Of the east fractional half, the southwest quarter, and the south half of the northwest quarter of section six, containing together 565.60 acres.

Of fractional sec. seven, containing 640.71 acres.

Of the southwest quarter, the east half of the northwest quarter, and the west half of the southeast quarter of section eight, containing together 320 acres.

And of the northeast quarter of section eighteen, containing 160 acres—

615 All in township fifteen south, of range one west, of the fifth principal meridian, as the same are marked and designated on the plans of the public surveys of the lands of the United States, and the whole of which lands, whereof an undivided half is hereby conveyed, containing, according to the said surveys, 2,575.02 acres of land:

To have and to hold the said undivided half of said lands and tenements, with the hereditaments and appurtenances thereunto in anywise belonging or appertaining, unto the said Benjamin H. Smith and his heirs forever.

And the said William H. Todd doth also, for the consideration aforesaid, give and grant unto the said Benjamin H. Smith, his heirs and assigns, forever, by way of servitude in favor of the lands hereby granted as the dominant estate and tenement, the right at all times hereafter, jointly with the children of the said William H. Todd other than the wife of said Benjamin H. Smith, the same servitude being created in favor of the other undivided half of said

616 lands and in favour of the lands constituting the Yellow Bayou plantation, which is adjacent to the said Bellevue plantation, and jointly with the heirs and assigns of said other children, of free passage, on foot or horseback, and with carriages and wagons, carts, and other conveyances, for himself and his servants and laborers, over, across, and through the west half of the northwest quarter of said section 8, in township fifteen south, of range one west aforesaid, for the purpose of conveying the cotton raised by him and grain to the gin-house and mill, and with the right at all times hereafter of joint use with the said other children of the said gin-house and of the press on said tract of land and of the mill, for all his necessary uses and those of his heirs and assigns, as proprietors of the said undivided half of the said lands, free of all charge, except his proportion of the costs of necessary repairs of the said gin-house, gin, press, and mill, and the machinery thereof; and the said William H. Todd doth hereby covenant with the said

617 Benjamin H. Smith, his heirs and assigns, that he is

seized in fee and full proprietorship of the said lands and with full power and good right to sell and convey the same; that the same are free of encumbrances by him done or suffered and of all encumbrances except the mortgage or part thereof executed by Silas Craig to the State of Arkansas for stock subscribed and taken by him in the real estate bank of the State of Arkansas, and that he will, and his heirs, executors, and administrators shall, forever warrant and defend the said undivided half of the said lands and of every part and parcel thereof to the said Benjamin H. Smith, his heirs and assigns, against the lawful claims of all persons whomsoever, except against such claims as may arise under and by virtue of the mortgage aforesaid.

And the said Amanda M. Todd, for the consideration aforesaid, and in further consideration of one hundred dollars to
618 her in hand paid by the said Benjamin H. Smith, the receipt of which is hereby acknowledged, doth hereby grant, bargain, sell, and relinquish unto the said Benjamin H. Smith all her interest in said land as wife of said William H. Todd and right of dower therein and in every part thereof.

In witness whereof the said William H. Todd and Amanda M. Todd do hereunto set their hands and affix their seals the day and year first aforesaid.

WM. H. TODD. [SEAL.]
A. M. TODD. [SEAL.]

Signed, sealed, and delivered by Wm. H. and Amanda M. Todd in our presence the 29th of October, 1869.

ALBERT PIKE.
LUTHER H. PIKE.

STATE OF ARKANSAS, *County of Chicot:*

Be it remembered that on this 13th day of November, in the year of our Lord 1869, at the county of Chicot, in the State of
619 Arkansas, before me, Wm. B. Street, an acting and commissioned justice of the peace of the said county, personally came and appeared William H. Todd, to me personally well known, and acknowledged that he had voluntarily executed the foregoing deed of bargain and sale and delivered the same to the said Benjamin H. Smith for the uses, purposes, and consideration therein expressed, and desired the same to be certified for record.

And at the same time and place also came and appeared before me Amanda Melvina Todd, wife of the said William H. Todd, also personally to me well known, and being by me examined separate and apart from and in the absence of her said husband, and the tenor and effect of the foregoing conveyance being by me fully made known to her, she declared and acknowledged that she voluntarily and of her own free will and accord, without persuasion or compulsion or undue influence of her said husband, executed and delivered the same and relinquished her dower in the lands
620 hereby conveyed for the uses, purposes, and considerations therein expressed, and desired that the same might be certified for record.

Given under my hand, as such justice of the peace as aforesaid, day and year aforesaid.

[$20 U. S. Rev. stamps affixed.]

WM. B. STREET, *J. P.*

Filed for record this 3d day of December, 1869.
Attest: H. W. GRAVES, *Clerk.*

Am't U. S. Rev. duly affixed.
Attest: H. W. GRAVES.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify that the preceding six pages and the above writing on this page contain a true and correct copy of the instrument executed by and between the parties therein mentioned, as the same appears of record in Record Book of Deeds, &c., M, on pages 598, &c., in my office.

621 Witness my hand and the seal of said court hereto affixed this the 3d day of Sept., 1883.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

622 EXHIBIT "S."

Copy of Claim, Smith v. Todd.

Wm. H. Todd in ac. with B. H. Smith.

1873.				Dr.	Cr.
May	9.	To cash paid	Arck Green	1 00	
"	"	"	Nelson, hauling cotton	2 00	
"	"	"	Monroe Smith, "	1 00	
"	"	"	Jackson, "	1 00	
"	"	"	Jane Turner	1 00	
"	"	"	Ben. Patterson, ginning	8 00	
"	"	"	Anna, cotton hand	40 00	
"	"	"	Ellen McFair	1 60	
"	"	paid	Nelson, hauling cotton	50	
"	"	"	Hannah Jones	1 00	
July	15.	"	expense to Sunnyside	10 50	
August	8.	"	Lee Lewis	1 50	
"	30.	"	Ben. Patterson, ginning Anthony —	6 00	
"	"	"	Nelson, hauling " cotton	1 50	
"	"	"	Robinson Ruddick, for labor for Yellow Bayou gin	200 00	
1874.					
April	20.	"	State scrip for Yellow Bayou tax	150 00	
"	"	"	L. H. Springer, " "	5 00	
Oct.	31.	"	d'ft on Bussey & Co., J. G. B. Simms	636 46	
Nov.	24.	"	" " D. H. Reynolds	210 00	
Dec'r	22.	"	" " Martin	115 00	
"	"	"	6 grate bars	1 50	
1875.					
Feb'y	8.	"	paid Cloves' plow bill	27 00	
Mar.	13.	"	" Jno. G. B. Simms	66 00	
"	"	"	Bussey & Co., accept's d'fts 636, 46, & 210	18 97	
Ap'l	15.	"	L. H. Springer's fees	5 00	

623

Apr.	15.	To school warrants	1 50		
1876.					
Ap'l	10.	" d'ft on Bussey & Co.	50 00		
"	17.	" " " for Blocher	185 00		
		Forw'd	1,748 03		
1876.		To am't bro't forw'd	1,748 03		
Ap'l	18.	" d'ft on Bussy & Co. for L. C. Bryan	163 65		
"	19.	" " " for L. H. Springer	70 69		
"	28.	" " " for Chs. Baker	30 37		
May	5.	" " " " Schofield & Co.	120 00		
"	10.	By net proceeds 14 b. c.		477 09	
"	20.	" " 4 "		117 06	
June	5.	To paid Squire Williams	5 00		
"	7.	" " J. D. Coates	5 50		
"	27.	" " Adam White	3 00		
"	"	" " Squire Williams	1 00		
"	"	By cash from Evelyn		25 00	
"	30.	To " paid Mole for Hannibal	5 00		
Aug.	1.	" trace chains	5 00		
"	"	" am't paid Sheriff Scott, def 't	192 60		
"	"	By net proceeds 6 b. c.		188 95	
"	16.	" sale cotton seed		99 80	
"	"	To cash paid Mr. Mole	50 00		
"	"	" 3 sacks oats	10 00		
"	17.	" paid Adam White	5 00		
"	19.	" 100 yds. bagging	14 00		
"	26.	" by 300 sacks seed		89 20	
"	"	" L. C. Bryan on ac't	5 00		
Sept.	2.	" paid E. Mole	20 00		
"	4.	" 3 sacks oats	10 00		

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Sept.	14.	To 40 yds. Osnaburg	5 74		
"	16.	" 1 keg nails	3 00		
"	28.	" cash paid Mr. Mole, pick'g cotton	10 00		
"	"	" " for bank mortgage	160 00		
Nov'r	9.	" bagging & ties	51 39		
"	"	" E. Mole, charges on cotton	25 00		
"	10.	By net proceeds, 16 b. c.		419 25	
		Forward	2,718 97	1,416 35	
1876.					
		Bro't forw'd	2,718 97	1,416 35	
Dec'r	16.	To paid D. H. Reynolds on Jury & Gillis' debts	419 25		
1877.					
Jan'y	1.	" " " " "	1,103 00		
March	1.	" James A. Robinson	50 00		
"	"	" 100 yds. bagging	15 00		
"	"	" d'ft favor Jennie Amens, wages	45 00		
"	20.	" cash " " "	15 00		
"	21.	" paid Wm. Watson, iron work	17 80		
Ap'l	16.	" S. H. Holland, cost Jim Webb's case	22 25		
May	10.	" Bussey & Co.	7 00		
"	"	" " "	415 00		Error
"	"	By net proceeds, 10 b. c.		384 86	
"	"	" " " 5 "		207 29	
"	"	" " " 1 "		22 45	
"	"	" " " 1 "		34 76	
"	"	" " " 4 "		165 15	
"	"	" " " 5 "		199 10	
"	"	" " " 1 "		35 58	
"	"	" " " 1 "		42 60	
"	"	" " " 11 "		385 41	
July	18.	To bill supplies Yellow Bayou	43 53		

625

July	18.	To fr't and receiving		2 75	
"	20.	" taxes on Yellow Bayou mules			
"	25.	By net proceeds, 3 b. c.			118 02
"	30.	" sales cotton seed			25 20
"	"	To filling and hauling seeds		2 75	
Aug.	30.	" paid Lucendia Turner, cash		4 00	
"	30.	" Osnaburg, Billy		2 00	
Sept.	27.	" grate bars		5 00	
"	"	" 15 gin saws		15 00	
Dec'r	29.	" 10 sacks oats & meal		40 53	
1878.					
Jan'y	30.	" J. B. Newman & Co., bill goods		67 61	
		Forw'd		5,430 69	2,617 52
		Am't forw'd		5,430 69	2,617 52
1878.					
Jan'y	30.	To gin whangs		1 25	
"	"	" Jas. F. Robinson		200 00	
Feb'y	4.	" d'ft to self		200 00	
"	29.	" " J. R. Martin		100 00	
"	"	" " self		45 00	
March	1.	" " "		50 00	
"	18.	" paid levee men		77 75	
"	28.	" cash to Wm. Todd		50 00	
"	"	" 2 boxes axle-grease		50	
"	"	" cash to M. L. Rice		200 00	
"	"	" " J. R. Martin		100 00	
"	"	" 4 sacks oats		12 00	
May	8.	" 6 "		18 00	
"	"	" 1 bushel seed corn		1 00	
"	"	" paid Henry Turner, hauling		1 25	
"	28.	" 5 sacks oats		15 00	

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May	28.	To Alf Parish, 1 plow beam		1 00	
"	28.	" paid Josh Turner, cotton		5 00	
June	17.	" 8 sacks oats		24 00	
"	"	" 1 plow		5 00	
"	"	" coal oil and turpentine		1 00	
"	29.	" 6 sacks oats		18 00	
July	20.	" 2 " "		6 00	
"	29.	" 5 " "		15 00	
"	"	" Henry Turner, hauling		1 50	
"	"	" Wm. Watson, plow & sweep		2 25	
"	"	" Paddy & Murry, 2,062 feet levee		137 06	
"	"	" R. M. Fry, taxes 1876, mules		37 13	
Jan'y	1.	By net proceeds, 3 b. c.			133 54
"	17.	" " 5 "			177 87
Feb'y	16.	" " 3 "			118 59
		Forw'd		6,755 38	3,047 52
		Bro't forw'd		6,755 38	3,047 52
1878.					
Feb'y	16.	By net proceeds, 5 b. c.			176 36
"	21.	" " 9 "			355 24
"	26.	" " 1 "			34 60
Mar.	9.	" " 2 "			32 55
"	12.	" " 16 "			391 64
"	28.	" " 1 "			24 03
Ap'l	6.	" " 7 "			189 94
"	"	" " 7 "			172 52
May	13.	" " 10 "			305 88
"	15.	" " 1 "			22 45
"	21.	" " 1 "			23 07
"	"	To taxes on Walker's place, 1877		145 92	
Aug.	20.	" 1 keg nails		3 50	

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Aug.	20.	To 35 yds. Osnaburg	5 25	
Sept.	15.	" 17 " "	2 25	
"	26.	" Henry Turner, hauling	2 50	
"	"	By net proceeds, 2 b. c		68 99
Nov'r	11.	To 10 sacks oats	30 00	
"	"	" Yellow Bayou, personally, 1877	25 00	
Dec.	4.	" wharv'g's		
"	"	" 1 brush belt, 12 f't	4 00	
"	"	" Silas Brown	1 00	
"	"	" 5 bundles ties	15 00	
"	"	" 2 boxes axle-grease	40	
"	"	" oil	25	
"	"	" plow lines	1 00	
"	"	" your draft, due June 1st, 1879	350 00	
1879.				
Jan'y	20.	" Gin oil, 50; salt, 25	75	
"	"	" 1 roll bagging	7 00	
"	25.	" am't paid Annie	18 00	
"	"	By Henry Turner's corn rent		
		Forw'd	7,367 20	4,844 79
		Bro't forw'd	7,367 20	4,844 79
1879.				
Jan'y	25.	By Wm. Turner's corn rent		
"	"	" Josh, " "		21 00
Feb'y	5.	To draft favor Rice & Bishop	200 00	
"	10.	" 75 yds. bagging	10 50	
"	10.	" 2 bundles ties	6 00	
"	18.	" am't due me in S. Brown's cot'n	4 00	
"	"	" 4 bbls. corn	2 00	
"	"	" 30 yds. bagging	4 40	
"	"	" Collins, for hauling	10 00	
"	"	" hauling cotton	14 00	

628

Mar.	28.	" Chas. Moran	420 00	
"	29.	" Lee Goliskely, plow work	26 15	
Ap'l	9.	By net proceeds, 28 b. c.		871 14
"	"	To draft favor G. W. Craddock	250 00	
May	22.	By net proceeds, 9 b. c.		414 17
"	"	" am't from cotton seed		
"	"	To charges on five bales cotton	3 75	
July	1.	By net proceeds, 5 b. c.		202 81
"	"	To am't paid for Jennie Todd }	860 00	
"	"	" bal. due on West Philadelphia }		
"	"	" lot of ground	825 00	
"	"	" services rendered, 1876	1,000 00	
"	"	" " 1877	1,000 00	
"	"	" " 1878	500 00	
1874.				
July	9.	By net proceeds, 2 b. c.		117 93
"	20.	" " 1 "		40 92
Dec'r	23.	" " 3 "		170 34
1875.				
Feb'y	11.	" " 8 "		471 63
1879.				
July	1.	" 1 bed, 1 spring, 1 mattress		20 00
"	"	" 1 bureau, com'n		10 00
"	"	" 1 bed & mattress		15 00
		Am't forw'd	12,084 45	7,199 73

		Bro't forw'd		12,084 45	7,199 83
1879.					
July	1.	By 1 carpet			15 00
"	"	To am't fees sale Bellevue		500 00	
"	"	By error in charge, May 10, 1877, Bussey & Co.			415 00
				$12,584 45	$8,049 08
1873.					
Ap'l	10.	To Crawford for fencing		2 50	
May	3.	" Biggs & George, 2,400 rails		24 00	
July	1.	" Joe Bearse, 500 rails		5 00	
629					
July	5.	To Robinson Ruddick for lumber		100 00	
"	10.	" paid Robinson Ruddick, draft		200 00	
Aug.	1.	" 10 kegs nails		28 50	
"	"	" 2 doz. hinges		7 25	
"	"	" fr't & nails		5 00	
"	"	" 25 M shingles		112 50	
"	"	" paid Jim Webb		5 00	
Sept.	12.	" " for well		15 00	
"	"	" " Ben. Patterson, ginning		40 00	
"	20.	" 2 monkey-wrenches		3 00	
"	"	" repairs on cylinders		238 58	
"	"	" fr't "		10 00	
"	"	" belting, &c.		27 88	
"	"	" 3 bbls. cement		7 50	
"	"	" 2 " lime		3 00	
"	"	" 1 box glass		5 00	
"	"	" drayage		1 00	
"	"	" insurance, fr't, &c.		25 00	
"	"	" passage up & down, hotel bill		64 65	
Oct.	9.	" Jury & Gillis for brick		84 78	
"	"	" fr't on same		36 00	
"	20.	" loading on wagon		1 50	
Nov'r	8.	" paid brick mason		30 00	
"	"	" bal. due Buckner, H. P.		15 90	
"	"	" Ben. Patterson, ginning		55 00	
1874.					
Jan'y	30.	" Robinson Ruddick		25 80	
Feb'y	2.	" paid fr't		1 00	
"	6.	" " Joe Bearse, lumber		13 62	
630					
Feb'y	6.	" paid Nelson Stroker, hauling		81 72	
"	20.	" Geo. Smith for ditching		2 00	
"	"	" Lee for ironwork		5 00	
"	"	" 15 bales hay & fr't		55 65	
Mar.	1.	" paid Williamson, boiler		10 00	
"	"	" Lewis Banks for timber		52 00	
"	10.	" county scrip, @ 50c.		30 00	
"	"	" Dave Tripp for hauling		46 37	
"	"	" paid Bill Taylor for rails		19 00	
"	"	" Geo. Gayton & Briggs		6 00	
"	30.	" rafting logs		11 00	
"	"	" Frank Smith, fencing		7 50	
"	"	" Geo. Gayton, "		8 50	
Ap'l	20.	" paid L. H. Springer for taxes		5 00	
June	24.	" " " " levee bond		7 50	
"	"	" 21 sacks oats		69 72	
"	"	" receiving same		2 00	
"	"	" paid Nelson for bricklaying		20 00	
"	"	" " Geo. Smith, moving fence		5 00	
"	"	" " Simmons for labor		32 25	
"	"	" " Trawrick's draft		50 00	
"	"	" " board for laborer		15 00	

July	12.	To Nelson for hauling	8	25
"	"	" Ben. Patterson for rails	2	00
"	"	" Mose Kindrick, mule hire	5	00
"	25.	" Nelson, hauling	3	00
Aug.	1.	" " splitting rails	4	00
"	"	" Ben. Patterson, "	2	00
"	"	" Dave Tripp	2	00
631				
Aug.	1.	" 10 sacks oats	39	69
"	"	" 1 b'r'l oil	14	10
"	"	" paid R. R. Sessions for oil	1	50
"	"	" belting	52	20
"	"	" calomel, salts, & blue-mass	3	20
"	"	" ½ doz. shovels	7	00
"	"	" drayage		75
"	"	" insurance, 1.00; commission, 1.00	2	00
"	"	" fr't on same	7	00
"	"	" am't paid for State scrip	204	00
"	"	" " " " county " @ 50	28	50
"	"	" Wash. Abanaster, hauling	25	00
"	"	" " " board	16	00
"	"	" Crawford for shingles & boards	4	00
"	"	" Geo. Smith "	2	50
"	"	" Nelson "	3	75
"	"	" Stroker for rails	15	75
"	"	" Dave Tripp "	5	00
"	"	" " " hauling	9	00
"	"	" Nelson for hauling	8	00
"	"	" Isiah Troadss, do.	5	00
"	27.	" Bussey & Co., Osnaburg	25	24
"	"	" " " bagging & ties	162	79
"	"	" fr't on same	10	00
Oct.	5.	" oats & bran	50	00
"	19.	" 3 bbls. lime	5	62
"	19.	" 5 gallons lard oil, 1873	5	75
Nov.	25.	" 1 bbl. salt	2	25
"	"	" 10 sacks bran	15	68
632				
Nov.	25.	" fr't on same	7	55
Dec.	2.	" paid J. Leaman's draft	20	13
"	"	" J. F. Robinson for Leaman	71	87
"	15.	" building five chimneys	50	00
1874.				
Dec.	"	" board for two men, 1 week each	8	00
"	"	" draft J. T. Whittaker for gin	500	00
"	"	" John Doyle & others for leveeing	398	82
"	22.	" J. Leaman, Sept. 25, labor on gin	25	00
"	28.	" Bussey & Co., bill goods	14	28
"	30.	" dr'ft on Bussey & Co., per J. T. Whittaker	878	75
"	31.	" Nelson for hauling	9	25
"	"	" Dave Tripp "	7	50
"	"	" Hannibal Thompson for rails	5	95
1875.				
Jan'y	5.	" 2,000 f't lumber	35	08
"	"	" 5 bales hay & fr't	21	70
"	1.	" dollars for rails	8	75
"	"	" Peter Snowden for watching	5	00
"	"	" Jack " labor	1	00
"	"	" Williams, repairs on gin	75	00
"	6.	" repairs on gin roof	33	00
"	"	" am't paid by me to M. H. Carr's Co. for building in 1873	209	58

Feb'y	8.	To	paid Lee for ironwork	5 50
"	13.	"	J. W. Trawick's draft	50 00
"	20.	"	making rails & post	115 50
"	"	"	paid for ditching	40 00
"	"	"	Nelson for hauling from Jan. 23 to date	17 90
"	22.	"	paid Bob Web for boards	9 00
"	"	"	" Jim Clove's plow bill	134 70
"	27.	"	oats, bran, & hay	174 25
633				
Feb'y	27.	"	d'ft favor McAlphin & Butts, mules	100 00
"	"	"	" " Isaac Cohen	100 00
Mar.	5.	"	repairs on chimneys	13 00
"	16.	"	Mose for fencing	2 00
"	"	"	Lucendia, 1 hide	1 50
"	17.	"	paid Henry Goon for labor	5 00
"	"	"	" Ben. Patterson, engineer	52 00
"	22.	"	2 d'fts favor Isaac Cohen	100 00
"	"	"	dr'ft D. H. Reynolds for B. E. B. M.	475 00
"	"	"	" " " " "	350 00
"	30.	"	5 gallons fish oil	4 75
"	"	"	belt, hoocks, &c.	7 17
Ap'l	15.	"	paid Mose for fencing	3 00
"	"	"	L. H. Springer, fees	5 00
"	"	"	currency paid for taxes, 1874	58 06
"	"	"	Wess Mitchell, making rail fence	6 65
May	8.	"	Nelson, hauling rails	5 00
June	10.	"	paid Williams, repairs on gin	25 00
"	25.	"	10 gallons whiskey	13 50
"	26.	"	lumber, R. A. May	41 28
Aug.	1.	"	fr't on lumber	14 47
"	5.	"	doors	44 00
"	"	"	working on levee	70 00
"	"	"	white lead & turpentine	13 50
"	"	"	Bussey & Co., gin boxings, &c.	27 49
Sept.	27.	"	white lead & hinges	4 25
Oct.	6.	"	hinges, screens, & locks	2 00
"	"	"	Jack French for corn	3 00
634				
Nov.	10.	"	Whitehill & Co., lumber	120 92
"	"	"	hay, nails, & bran	41 75
"	22.	"	bagging & ties	182 72
"	"	"	fr't on same	6 25
"	"	"	2 kegs white lead	6 00
Dec. 1876.	2.	"	d'ft McAlphin & Butts, mules	175 00
Jan'y	10.	"	shingles	27 00
"	15.	"	Austin, hauling cotton	3 00
"	15.	"	Crawford, moving fence	1 50
"	20.	"	Geo. Smith, picking cotton for which 2½ bales — taken	113 50
"	25.	"	8 bbls. lime	11 97
"	"	"	fr't on same	4 00
"	"	"	picking Andrews' crop, for which 865 lbs. cotton was taken	78 90
"	29.	"	Bob, hauling cotton	1 50
"	"	"	Austin, hauling and fencing	2 50
Feb'y	7.	"	" fencing	2 00
"	"	"	Jack Ogle, on mason	2 50
"	26.	"	paid levee men by day	26 00
Mar.	6.	"	" J. W. Trawick on ac't	25 00
"	12.	"	Richardson & May, bill, bridles, &c.	48 71
"	"	"	Richardson & May, bill, plow line	7 63
"	14.	"	paid levee hands	7 00
"	30.	"	d'ft on R & May for W. D. Blocher	165 00

Apr.	2.	To labor on levee	15 00
"	"	" Jno. Carroll, order on Cohen	3 75
"	"	" Dan, " " "	4 00
"	"	" J. W. Trawick, on ac't	100 00
"	"	" bbls. salt	3 50
635			
Ap'l	2.	" fr't on same	2 50
"	7.	" D. W. Carroll, leve-ing	2,248 77
"	19.	" d'ft on R. & May for L. A. Springer	61 44
"	"	" county scrip, @ 60c.	88 20
"	"	" Richardson & May, interest	22 76
"	25.	" " " bill, mule collars	28 62
"	"	" paid for making rails	77 41
"	"	" cash paid I. Cohen, July 5, '75	101 00
July	8.	" Peter, for ginning	2 00
"	"	" Austin, for "	2 00
"	"	" Geo. Mitchell, for ginning	2 00
"	"	" Allen Morse, care of mule	1 00
"	"	" paid D. Webster for cotton	5 00
Aug.	4.	" cash paid J. Cohen, $5.00 & $10.00	15 00
"	"	" 10 sacks oats	25 00
"	18.	" Peter Snowden for labor	1 00
"	"	" 579 lbs. cotton, G. Robinson, ac't	57 90
"	"	" am't due for G. Robinson	45 00
"	26.	" J. Williams, on gin	50 00
"	31.	" paid Cohen Dallas, picking	5 75
"	"	" " Illinois for oats	30 30
Sept.	9.	" " Peter, fencing	4 00
"	12.	" 125 yds. Osnaburg	14 99
"	22.	" paid Cohen, in Bluett's ac't	15 37
Oct.	4.	" Shryock Brothers' d'ft	56 79
"	"	" " " " oats	108 00
"	"	" Receiving fr't	10 00
"	"	" 1 box coal	1 00
"	"	" W. Owens, for hauling rails	37 90
636			
Oct.	21.	" Ben. Patterson, ginning, 1875	35 75
"	"	" board, 3 men 2 weeks	24 00
Nov.	1.	" Johnson d'ft R. & May, rec'iv'g	15 00
"	"	" Richardson & May, bill goods	51 94
"	11.	" J. W. Trawick on ac't	15 00
"	"	" oats, hay, & bran	11 75
"	"	" paid Jim Que for chimneys	5 00
"	25.	" 1 gold watch, Cohen	125 00
"	"	" paid on real estate bank mortgage	650 00
"	1.	" Tony Chinaman, account	19 00
"	"	" oats, bran, & hay	54 00
"	"	" Henry Chinaman, account	18 67
1877.			
Feb'y	3.	" paid Cohen, account	30 00
"	"	" paid Jack's doctor's bill	23 00
"	5.	" hauling cotton	3 50
"	"	" engineer	5 00
"	10.	" " Pitt Given	3 00
"	"	" moving cotton seed	1 00
"	"	" paid Bob Webb for cotton	6 50
"	12.	" Wm. Mose, tobacco	2 00
"	"	" Buckner & Co., bagging	33 36
"	14.	" Simms, tobacco	2 00
Mar.	19.	" Ben Johnson, cotton	7 60
"	21.	" acknowledging contract	3 00
"	22.	" rails	5 00
"	24.	" paid Nol for boiler	100 00

Mar.	24.	To G. H. Eckerly & Bro., meat	48 22
"	"	" " " "	38 83
"	"	" 1 keg nails	3 50

637

Mar.	30.	To Lee Golikely, iron work	5 00
Apr.	2.	" Johnston, receiving	7 65
"	"	" sharpening two plows	50
"	"	" plowing & planting corn	15 00
"	"	" James F. Robinson, fees	44 57
"	"	" oats, corn & bran in Feb'y	77 43
"	"	" commission, drayage, & insurance	4 55
"	"	" fr't on same	18 00
"	"	" bagging and ties, Feb'y	25 51
"	"	" tobacco & hoes	24 72
"	4.	" oats, bran, & corn	97 36
"	24.	" meat & meal	49 37
May	24.	" J. T. Whitaker on note	730 22
June	1.	" 4 bbls. meal	11 40
"	"	drayage & freight	2 50
"	8.	To Johnston, receiving	6 05
"	"	" G. H. Eckerly, meat & meal	50 00
"	"	" Dave Tripp, hauling & labor	60 75
"	"	" taxes for 1876, paid	249 87
"	20.	" meat	30 27
July	14.	" Johnson & Baker	16 30
Aug.	1.	" J. W. Trawick, order	26 00
"	"	" filling, seed, & hauling	9 87
"	2.	" Lee Golikely, iron work	5 00
"	"	" Harry Mitchell, engineer	9 00
"	15.	" John Jup, levee	5 50
"	"	" Buck, filling hole at gate	1 50
"	"	" meat & meal	50 21

638

Sept.	1.	" fr't receiving	29 30
"	"	" Jeff for labor	3 00
"	"	" plank, Jackson	16 00
"	"	" " Dickinson	7 05
"	"	" Jim Webb for digging well	7 00
"	"	" 10 sacks oats	17 80
"	"	" 5 bls. meal	14 00
"	"	" J. W. Trawick on ac't	25 00
"	"	" wheelbarrows	19 00
"	"	" shovels	12 00
"	"	" cane knives	1 50
"	"	" blankets	26 40
"	"	" spirit-level	75
"	"	" 1 keg nails	2 45
"	"	" 1 sack oats	17 42
"	"	" 5 sacks bran	4 80
"	"	" Osnaburg	22 30
"	"	" J. W. Trawick	50 00
"	"	" McAlphin & Butts, mules	100 00
"	"	" 1 bbl. salt	1 50
"	"	" blankets	8 80
"	"	" shovels	7 46
"	"	" meat & meal	24 40
Oct.	9.	" meal	11 35
"	"	" fr't receiving	22 50
"	"	" " "	20 50
"	"	" saws & Idler frames	15 00
"	"	" padlocks, axe, & handle	4 25
"	"	" Dave & Austin, hauling	2 00

639

Nov.	1.	"	½ doz. wheelbarrows	9 25
"	"	"	" " blankets	14 40
"	"	"	" " shovels	6 00
"	"	"	½ bbl. oil	7 35
"	"	"	5 sacks oats	9 98
"	"	"	5 " bran	4 90
"	"	"	6 bales hay	11 20
"	"	"	4 bbls. meal	8 40
"	"	"	2 kegs nails	5 50
"	"	"	drayage	1 20
"	"	"	insurance	1 15
"	10.	"	Austin, Dave & George	1 50
"	19.	"	meat	19 60
Dec.	17.	"	1 bundle ties	3 00
"	"	"	blankets, 2.00; baskets, 2.00	4 00
1878.				
Feb'y	1.	"	J. W. Trawick	150 00
"	"	"	John Bergon	62 50
"	4.	"	freight & receiving	24 46
"	"	"	coffin trimmings for levee man	3 70
"	"	"	1 wagon-tongue	1 75
"	24.	"	oats & corn	59 50
"	"	"	Clove's plow bill	114 85
"	"	"	fr't & receiving	27 56
"	"	"	Lee Golikely, ironwork	5 00
"	"	"	1 coil plow line	6 50
Mar.	4.	"	McAlphin & Butts	66 25
"	13.	"	oats & corn	97 28
"	20.	"	labor on fence	17 95
"	"	"	plowing corn land	5 00

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Mar.	20.	"	fr't & receiving	50 15
"	"	"	repairs on levee	3,240 22
				$18,889 46

1873.				
Sept.	10.	To net proceeds, 11 b. c.		555 00
Oct.	15.	" " 3 "		133 70
1874.				
June	27.	" " 4 "		265 77
July	9.	" " 4 "		234 81
"	"	" sales cotton seed		150 00
Sept.	1.	" net proceeds, 1 b. c.		21 67
"	"	" " 8 "		349 62
Oct.	1.	" " 2 "		77 93
Dec.	2.	" " 1 "		37 69
"	28.	" " 10 "		556 02
1875.				
Jan'y	11.	" goods		10 80
"	15.	" proceeds, 20 b. c.		1,015 42
"	25.	" " 12 "		613 75
Feb'y	13.	" " 11 "		614 15
"	"	" " 2 "		93 22
"	"	" " 3 "		172 99
Mar.	6.	" " 9 "		513 92
"	"	" " 7 "		386 67
"	26.	" " 5 "		279 02
July	5.	" sales cotton seed		400 00
Dec.	24.	" net proceeds, 9 b. c.		428 34
1876.				
Jan'y	10.	" " 8 "		351 91
Feb'y	3.	" " 1 "		27 55
"	7.	" " 2 "		60 85
"	9.	" " 17 "		710 36

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1876.						
Feb'y	18.	" net proceeds,	22	b. c.		1,086 30
Apr.	14.	" "	13	"		545 79
July	11.	" "	3	"		113 43
"	19.	" "	1	"		31 83
Aug.	15.	" "	4	"		149 75
Sept.	11.	" "	5	"		171 70
1876.						
Oct.	18.	" "	10	"		310 06
1877.						
Jan'y	9.	" "	9	"		398 72
Feb'y	20.	" "	8	"		299 77
Mar.	24.	" "	8	"		320 46
Ap'l	25.	" "	1	"		39 19
"	18.	" "	2	"		67 88
May	3.	" "	1	"		36 04
"	"	" "	7	"		244 68
1878.						
Jan'y	21.	" "	6	"		275 19
"	"	" "	3	"		114 46
"	"	" "	2	"		85 27
Feb'y	16.	" "	2	"		60 27
"	"	" "	1	"		30 67
"	"	" "	1	"		32 70
"	"	" "	3	"		100 68
"	"	" "	2	"		72 60
"	14.	" "	1	"		33 68
"	"	" "	1	"		28 50
"	"	" "	2	"		64 26
"	"	" "	2	"		65 25
"	"	" "	2	"		70 95
Ap'l	12.	" "	15	"		535 21
						$13,440 02

642

Am't W. H. Todd ac., as per foregoing statements	$4,535 37
½ am't plantation ac., as per foregoing statement	2,724 72
Bal. due B. H. Smith	7,260 09

STATE OF ARKANSAS, } *sct:*
County of Chicot, }

I, B. H. Smith, do solemnly swear that nothing has been paid or delivered towards the satisfaction of the above and foregoing demand except what is credited thereon, and that the sum of seven thousand two hundred and sixty $\frac{09}{100}$ dollars above demanded is justly due, so help me God.

BENJ. H. SMITH.

Subscribed & sworn to before me this 6th day of October, 1879.

GEO. T. WILKINSON, *Clerk,*
By W. W. WILKINSON, *D. C.*

643 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court & *ex officio* clerk of probate court within and for the county and State aforesaid, do hereby certify that the preceding 21 pages and the endorsement

hereon contain a true & correct copy of a claim of Benj. H. Smith probated against the estate of Wm. H. Todd, dec'd, as the same appears of file in my office.

Witness my hand & the seal of said probate court hereto affixed this the 3d day of September, 1883.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

Exhibit "T" to the Deposition of Geo. T. Wilkinson.

Deed. S. H. Holland, sheriff, to B. H. Smith.

STATE OF ARKANSAS, *County of Chicot:*

S. H. Holland, as sheriff of said county, to all to whom these presents shall come, Greeting:

644 Whereas, on the 8th day of April, 1878, there was issued from the clerk of the circuit court for Chicot county, signed by the clerk and attested by the seal of said court, a certain writ of execution in the name of the State of Arkansas and to me as such sheriff directed, and which came to my hands on the 8th day of April, 1878, the recitals of which writ of execution are as follows, to wit:

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are commanded that of the estate of Wm. H. Todd you cause to be made the sum of $6,417.60, which James W. Cooper, late in our circuit court, recovered against said Wm. H. Todd, for $6,417.60, with interest thereon from the 16th day of January, 1878, till paid; also the sum of —— dollars, which was adjudged to the said James W. Cooper for costs in that suit expended, and that you have said sums of money within sixty days to render to the said James W. Cooper debt, damages, interest, and costs aforesaid; and, in

645 obedience to the commands of said writ and in order that the same might be executed and satisfied, I did afterwards, to wit, on the 9th day of April, A. D. 1878, in said county, proceed by then and there levying upon and seizing the following-described property as the property of said Wm. H. Todd, to wit: All sec. 12, W. ½ sec. 11, undivided half of the south half of sec. 11, all sec. 14, S. E. part N. E. ¼ sec. 10, all sec. 23, S. W. ¼ sec. 13, E. ½ N. W. ¼ sec. 24, E. ½ N. E. ¼ sec. 22, E. ½ S. E. ¼ sec. 15, N. ½ and S. E. ¼ sec. 13, S. ½ sec. 22, S. E. ¼ sec. 21, S. W. ¼ sec. 15, W. ½ S. E. ¼ sec. 15, all sec. 27, N. ½ and S. W. ¼ sec. 26, N. E. ¼ sec. 17, S. W. ¼ sec. 9, S. E. ¼ sec. 10, all in township 15 S., range 2 west, and S. ½ S. ½ sec. 4, S. diagonal half of N. ½ of S. ½ sec. 4, all sec. 5, E. ½ and S. W. ¼ and S. ½ of N. W. ¼ sec. 6, all sec. 7, W. ½ W. ½ of S. E. ¼ sec. 8, and N. E. ¼ sec. 18, township 15 S., R. 1 W.; and whereas afterwards, to wit, on the 20th day of April, 1878, I advertised the said tracts and parcels of land for sale according to law for twenty days by an advertisement inserted and published by two insertions before the day of sale in the Arkansas

646 City Post, a weekly newspaper published and printed in the county of Chicot, and by posting printed advertisements at the court-house door of said county and five other public places in

said county (one being upon the premises to be sold), to be sold at the door of the court-house of said county of Chicot on Monday, the 27th day of May, 1878, at which time and place I attended, and between the hours prescribed by law for judicial sales of said day I offered and cried the said tracts and parcels of land for sale, in separate tracts and parcels, to the highest bidder, and James F. Robinson, being the highest and best bidder, became the purchaser of the following tracts and parcels of land, being a part of the tracts and parcels of land seized and levied upon as before mentioned, to wit: All sec. 5, S. diagonal $\frac{1}{2}$ of N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ sec. 4, S. W. $\frac{1}{4}$ sec. 4, S. $\frac{1}{2}$ S. E. $\frac{1}{4}$ sec. 4, E. $\frac{1}{2}$ sec. 6, S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ sec. 6, S. W. $\frac{1}{4}$ sec. 6, all sec. 7, W. $\frac{1}{2}$
647 sec. 8, W. $\frac{1}{2}$ S. E. $\frac{1}{4}$ sec. 8, all in town. 15 S., R. 1 W., and W. $\frac{1}{2}$ sec. 12, W. $\frac{1}{2}$ of E. $\frac{1}{2}$ sec. 12, S. E. $\frac{1}{4}$ sec. 11, W. $\frac{1}{2}$ sec. 11, E. $\frac{1}{2}$ N. E. $\frac{1}{4}$ sec. 10, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ sec. 10, all sec. 13, all sec. 14, all sec. 23, E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ sec. 24, E. $\frac{1}{2}$ N. E. $\frac{1}{4}$ and S. $\frac{1}{2}$ of sec. 22, S. $\frac{1}{2}$ sec. 15, S. E. $\frac{1}{4}$ sec. 21, all sec. 27, N. $\frac{1}{2}$ sec. 26, S. W. $\frac{1}{4}$ sec. 26, N. E. $\frac{1}{4}$ sec. 17, and S. W. $\frac{1}{4}$ sec. 9, town. 15 S., R. 2 west, at and for the aggregate sum of fifty-three and $\frac{75}{100}$ dollars, which was the greatest amount then and there bid for the same; and whereas at the time of said sale I made and executed to the said purchaser, James F. Robinson, a certificate of purchase, as prescribed by law; & whereas the full period of twelve months has elapsed since the sale of said tracts and parcels of land as aforesaid, yet the said Wm. H. Todd hath not redeemed the same, as prescribed by law, nor any judgment creditor of the said Wm. H. Todd, nor either of them; and whereas the said James F. Robinson has assigned all his right, title, and interest in and to said lands to Benjamin F. Smith, as shown by endorse-
648 ment on said certificate of purchaser:

Now, therefore, know ye that I, the said S. H. Holland, in my capacity as sheriff, in consideration of the sum of fifty-three and $\frac{75}{100}$ — aforesaid, to me in hand paid by the said James F. Robinson, and of the transfer of said interest of said lands so sold by said James F. Robinson to said Benjamin H. Smith, the receipt of which moneys is hereby acknowledged, have bargained, sold, and conveyed, and by these presents do bargain, sell, alien, and convey, to the said Benjamin H. Smith all the right, title, interest, and claim which the said Wm. H. Todd had at the time of the rendition of the said judgment issue of the said execution or at any time thereafter to the last mentioned and described tracts and parcels of land:

To have and to hold the same to him, the said Benjamin H. Smith, his heirs, executors, administrators, and assigns, to their only use, benefit, and behoof forever; and I, the said Samuel H.
649 Holland, as such sheriff, do covenant with the said Benjamin H. Smith as aforesaid that in levying the said execution and everything the same concerning I have complied with, observed, and obeyed all the rules and regulations in law for executions, making sales and conveying the same so far as the office of sheriff and the execution under which I sold authorized me to do.

In testimony whereof I have hereunto set my hand this 7th day of June, 1879.

S. H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

On this the 29th day of December, 1879, before me, Geo. T. Wilkinson, clerk of the circuit court in and for the county and State aforesaid, appeared in person Samuel H. Holland, as sheriff — said county, to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as the party grantor, and acknowledged that he had executed the
650 same in his capacity as sheriff of said county for the uses, purposes, and considerations therein mentioned and set forth, and I do hereby so certify.

Witness my hand and the seal of said court hereto affixed this day & date above written.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

Filed for record Dec. 29, 1879, & recorded January 8, 1880.
GEO. T. WILKINSON, *Clerk,*
By W. W. WILKINSON, *D. C.*

I, Geo. T. Wilkinson, clerk of the circuit court & *ex officio* recorder within and for the county of Chicot, State of Arkansas, do hereby certify that the above writing on this page and the foregoing 5 pages is a true and correct copy of a deed from S. H. Holland, sheriff, to B. H. Smith, as the same appears of record in my office in Record of Deeds "X," on page 552.

Witness my hand and the seal of said court hereto affixed on this 30th day of November, 1883.

[SEAL.] GEO. T. WILKINSON, *Clerk,*
By C. L. MEAD, *D. C.*

651 *Deposition of Isaac Cohen.*

My name is Isaac Cohen; I live in Memphis, Tennessee; I am forty-seven years old; I knew William H. Todd in his lifetime; I know Benjamin H. Smith, a defendant in this suit; I lived in Chicot county, Arkansas, from about 1866, and I left there in 1876; I was merchandizing there; I have business transactions with the Yellow Bayou and Bellevue plantations; I began to have business transactions with them in 1871, and continued to do so until I left there in 1876; I transacted all the business with the Yellow Bayou place through Capt. Smith; I furnished corn, oats, and plantation supplies; I never furnished any plantation supplies to any one else on that plantation but Captain Smith; I know some of the parties living on that plantation at that time; there were Mr. Simmons,
652 Mr. Kirk, & Mr. White; I never supplied that plantation with anything on the order of either of these persons; Captain Smith ordered all the supplies and settled for them by giving me cotton from the Yellow Bayou place; in my transactions I recognized no one as the manager but Captain Smith—I mean my transactions with the Yellow Bayou plantation; I lent some money for the use of that plantation, and furnished it through Captain Smith.

Cross-examination:

My reason for recognizing Captain Smith was that there was no one else there to receive the articles. Mr. Todd was there some time in the fall, but not for any length of time—I mean that he was there in the fall or winter; I do not know exactly what month he was there.

1 Question. Was not Mr. Todd there in the spring from
653 1871 to 1876 until after the crop was planted?

A. I cannot say; I do not know the length of time he was there.

2 Q. Did not Mr. Todd request you to furnish supplies for the Yellow Bayou place at the request of Mrs. Simmons?

A. No, sir.

3 Q. Did not Mr. Todd himself get supplies and give orders for them from your store while he was there on the plantation?

A. Maybe he got some. I do not know. There was not much got at that season of the year, and I loaned him some money while he was there.

4 Q. Did Mr. Todd get supplies from you in the spring of the year while he was on the plantation?

A. Sometimes he used to settle. I do not know if he was there in the spring of the year. He used to buy some from me and used to pay me for them, and sometimes I would get a bale of cotton from him.

654 5 Q. Did not you furnish supplies for the Yellow Bayou place while Mr. Todd was there in person?

A. Yes, sir.

6 Q. On whose orders?

A. When he was there I gave them to the old gentleman on his order.

7 Q. Did you furnish all the supplies used on the place, or did you only furnish when there was a deficiency in the supplies from others?

A. I furnished most of the supplies.

8 Q. From whom did you get cotton in payment of your supplies when Mr. Todd was on the Yellow Bayou plantation?

A. Mr. Todd and Captain Smith were generally together at that time, and it made no difference. I got it from both of them; both of them were generally at the gin.

9 Q. At what gin?

655 A. Sometimes it was at the Yellow Bayou gin and sometimes at the Bellevue gin. They ginned some Yellow Bayou cotton at the Bellevue.

10 (Q.) Did you get any from the Yellow Bayou gin in 1871 or 1872 or 1873?

(A.) I do not remember exactly when they built the Yellow Bayou gin; I do not think it was built or repaired in 1871; there was a time when they could not gin there; I have forgotten what years they were.

11 (Q.) Was Captain Smith present at the Yellow Bayou gin after it was repaired when you received cotton there?

A. Yes, sir.

12 (Q.) In what years did you receive cotton from him at the Yellow Bayou gin?

(A.) In 1874 and some in 1875; I can't remember the years exactly.

13 (Q.) You say you loaned Mr. Todd money; did you loan it to him more than once?

(A.) Yes, sir.

14 (Q.) Did Captain Smith negotiate all those loans or arrange with you for all those loans?

656 (A.) Yes, sir; it happened in the summer generally; I generally made the loans in the summer.

15 (Q.) Did not Mr. Todd himself arrange for one large loan?

(A.) No, sir; not that I remember.

16 (Q.) Did you ever get any cotton from Mr. Simmons while he was on the Yellow Bayou place in payment of supplies furnished the Yellow Bayou place?

(A.) No, sir.

17 (Q.) Or from Mr. Kirk?

(A.) No, sir.

18 (Q.) Or from Mr. Mole?

A. No, sir.

And further dependent sayeth not.

Deposition of James F. Robinson.

I have, in partnership with one Captain Hicks, occupied the Bellevue and Yellow Bayou plantations. We rented those plantations in 1867 for that year. I lived on the Yellow Bayou during 1867. I employed an overseer for both places; I paid him two ~~hundred~~ thousand dollars; I thought that a reasonable compensation at that time

657 for the work on both the plantations.

The above *object* deposition was objected to by counsel for the plaintiffs as irrelevant.

J. F. ROBINSON.

Deposition of Benjamin H. Smith.

1 Q. State your residence, age, and name.

A. My name is Benjamin H. Smith; I live in Chicot county, and I am fifty-three years old.

2 Q. Were you acquainted with William H. Todd in his lifetime?

A. I was.

3 Q. Are you one of the defendants to this suit?

A. I am.

4 Q. Did you own any property in Chicot county, Arkansas, in partnership with William H. Todd?

A. I did.

5 Q. State what that property was?

A. The undivided one-half of the Bellevue plantation.

6 Q. What other property did Mr. Todd own in Chicot county?

A. The Yellow Bayou plantation.

658 7 Q. How long did Mr. Todd own that plantation—until what year?

A. From 1868 until about 1878, inclusive, he had possession of the Yellow Bayou plantation until that time; it was sold for the Halliday debt in 1876; Mr. Todd kept possession until 1879.

8 Q. Who superintended and managed those plantations from 1868 until 1877, inclusive?

A. I had the management and superintendence of the Bellevue from 1868 until 1877, inclusive, and also of the Yellow Bayou place.

9 Q. Did you reside on either of these plantations during that time?

A. I resided on the Yellow Bayou plantation from the first of January, 1868, to about the first of March, 1870, and on the Bellevue from that time till the present time.

10 Q. At what time did you acquire the half interest in the Bellevue plantation?

659 A. I think my deed was made in October, 1869.

11 Q. What was the price you agreed to pay for that place, for the half interest in the Bellevue place?

A. It was to be half of thirty-five thousand dollars.

12 Q. What contract or agreement did you have with Mr. Todd with regard to your compensation for managing those plantations?

A. One thousand dollars a year.

13 Q. Did you receive any part of that compensation up to the time you brought your suit?

A. I did not.

14 Q. How did you acquire the other half interest in the Bellevue plantation?

A. I acquired the west half of section six and seven at the Halliday sale for a balance claimed due William P. Halliday—that is, the undivided half of it.

15 Q. What kind of a sale do you speak of?

A. — was a sale under executions.

16 Q. Do you remember about what time that was?

660 A. I think it was in the fall of 1876, the east half of sections six and seven, and sold under an execution in favor of McMurray & Co. The sale was at the same time and place as the Halliday sale of the west half of those sections.

17 Q. What price did you pay and were there any encumbrances on the property at that time which affected the sale?

A. The west half of sections six and seven was about eight hundred dollars, perhaps not quite so much; the east half between four hundred and fifty and five hundred dollars; do not recollect the exact amount. There was a real-estate bank mortgage on six and seven and the northeast quarter of 18, and the Woodfolk mortgage covered the whole of Bellevue.

18 Q. State about how much of those encumbrances were at the time of the sale.

661 A. The real-estate bank mortgage was about eighteen thousand dollars, and the Woodfolk mortgage amounts to ten or eleven thousand dollars now, and perhaps more.

19 Q. State how you acquired the title to the balance of the half interest in the Bellevue of Mr. Todd.

(A.) I — the half interest of Mr. Todd in section five, the west half of eight, west half of southeast quarter of eight, and that which lay in section four under the sale on my judgment against Mr. Todd.

20 Q. Do you remember what was paid for that?

A. I do not remember the exact amount; about four thousand dollars, I reckon.

21 Q. In your suit with Mr. Todd for services rendered on Yellow Bayou and Bellevue was there any collusion between you and Mr. Todd?

A. No, sir; not any.

662 22 Q. Did you ever have any conversation with Mr. Todd or his counsel in regard to the suit before it was brought?

A. I never had any conversation with Mr. Todd's counsel; I talked with him about it; he owed me, and I wanted my money.

23 Q. How much of six and seven was cleared and in cultivation at the time you made the purchase under the Halliday and McMurray sales?

A. There was somewhere between two hundred and fifty and three hundred acres cleared and in cultivation.

24 Q. Have you had that cleared land surveyed since that purchase?

A. I have.

20 Q. Have you a plat of that land?

A. I have; I file a copy of the survey and mark it Exhibit One to this deposition; it shows 309.30 acres in the tract susceptible of cultivation and cleared.

663 26 Q. Did you have any agreement or understanding between you and Mr. Todd that you were to bring suit against him for your services?

A. I did not.

27 Q. Who owned the west half of the northwest quarter of section 8, township 15, range 1 west?

A. At what time?

18 Q. At the time Allen, Nugent & Co. levied their attachment, or, say, the first day of August, 1876. State fully what you know about the ownership of that piece of land.

A. The west half of northwest quarter was sold in September, 1872, under a decree of the Chicot circuit court, John G. B. Simms, commission-, and bought by myself on account of Benjamin H. Smith and William H. Todd; I mean for myself and Todd; it was September 16, 1872.

664 29 Q. Was there any conspiracy or combination between you and William H. Todd to transfer any part of his property to you for the purpose of hindering and delaying creditors of Todd at any time?

A. There was not.

30 Q. Was there, in any settlement you have ever had with Mr. Todd, credit given you for any services rendered as superintendent or manager of the Yellow Bayou and Bellevue plantations?

A. There was not.

31 Q. Do you remember what property was levied on under your attachment against Mr. Todd?

A. I think the Yellow Bayou mules, some cotton, and the lands in section- four, five, and eight, I think.

32 Q. How much cotton was levied on?

A. I do not remember how much; perhaps thirty or forty bales.

33 Q. Was there more than fifty, do you think?

665 A. I think not.

34 Q. Did Mr. Todd have anybody on the Yellow Bayou plantation while you were superintending and managing the property?

A. There were some mechanics there.

35 Q. Name them and state what their duties were.

A. A man by the name of Scott in 1870 and part of 1871, who was building cabins and teaching a colored school, feeding mules; in 1872 an old man by the name of White; he attended to the stock and was to repair the cisterns and did not do it. In part of 1873, commencing about July, one Joshua Simmons went there to repair the Yellow Bayou gin; after he repaired the Yellow Bayou gin he worked for about a month that fall in repairing Bellevue gin, and in 1874 Simmons again for a part of the year also worked on the Bellevue gin and on his own place on Gum Ridge up till

666 the time he was discharged, I think in December, 1874; I asked him to leave, by directions of Mr. Todd, in August, 1874, or in September; in 1875, Kirk — for a part of the year and he left some time in December, and in 1876, from about the first of March until about June or July, 1877, one Mole, and from about the first of May, 1878, up to the time Mr. Todd was dispossessed, one Charles Morgan. That brings it to 1879.

36 Q. Were those persons you have named under your control and management?

A. They were.

37 Q. Have you got any letter or papers signed by Mr. Todd relating to the management of the business of those plantations?

A. I have. I herewith file them and marked exhibits numbered from 2 to 25, inclusive.

38 Q. Were these letters received by you from Mr. Todd?

667 A. They were.

39 Q. Have you seen his handwrite and are you familiar with his handwriting?

A. I have seen him write and am familiar with his handwriting.

40 Q. Are they signed by Mr. Todd's genuine signature?

A. They are.

41 Q. Were they received by you in due course of mail soon after their respective dates?

A. They were.

42 Q. Was Thos. H. Allen, a plaintiff in this suit, a member of the firm — Allen, Nugent & Co.?

A. He is.

43 Q. What was the style of the Memphis house?

A. Thos. H. Allen & Co.

44 Q. What was the style of the firm in New Orleans with which Mr. Allen was connected?

A. It used to be T. H. & J. M. Allen; afterwards Allen, Nugent & Co.

45 Q. Did you ever receive any letters from the Memphis
668 house of Thos. H. Allen & Co. in regard to the Yellow Bayou or Bellevue plantation business?

A. I have; I herewith file them, marked Exhibits Numbers 26 to 32, inclusive.

46 Q. Have you a despatch from Mr. Todd enclosed in a letter from Thomas H. Allen of date of July 4, 1873?

A. I have; I file it as Exhibit 33.

47 Q. Have you the letter of Mr. Todd referred to in the letter of Thomas H. Allen & Co. of July 7th, 1873?

A. I have; I file that as Exhibit 34.

48 Q. In whose handwriting is that letter?

A. William H. Todd's.

49 Q. Were you in the habit of making shipments of cotton from the Yellow Bayou plantation for Mr. Todd during that time that you have mentioned while you were acting as manager of that place?

A. I was.

669 50 Q. Have you in your possession bills of lading showing shipments of that cotton made by you?

A. I have, and hereby attach them as Exhibits 35 to 58, inclusive.

51 Q. Do these bills of lading include any cotton except that which came from the Yellow Bayou place?

A. If it was before the fall of 1874 it perhaps would include a part of the Bellevue cotton; after 1874, they would not include any cotton but the Yellow Bayou cotton; it would not include any other if they were after November, 1874.

52 Q. Do these bills of ladings show all the cotton shipped from Yellow Bayou?

A. They do not.

53 Q. Why not?

A. Some of the bills of lading Mr. Todd had in Philadelphia, and *and* I do not know what has become of them; these are what
670 I could find among my papers. Some cotton was shipped to other parties, and I have the bills of lading. I have shipped cotton to William B. Street, Charles H. Carleton, James McMurray & Co., Robinson Reddick, J. W. Trawick, James Clove, J. G. B. Simms, Gen. D. H. Reynolds, H. W. Graves, T. T. Welling, J. F. Robinson.

54 Q. When Mr. Todd was in Arkansas did he sometimes ship cotton himself?

A. He did.

55 Q. During what part of the year and how long did he generally stay in Arkansas?

A. In 1869; he came in October and went away in March, 1870; after that he never came down until about Christmas. He could not stand the climate.

56 Q. Were you his son-in-law?

A. I was.

57 Q. What was his age in 1868?

A. He was sixty-seven years old in 1868.

58 Q. What was the state of his health from that time till he died?

671 A. He had a complaint that made it necessary for him to be where there was a physician who understood his case, and in 1874 he had a very severe spell of sickness and had a surgical operation performed upon him in Philadelphia.

59 Q. Have you any receipt or papers in your possession showing payments made by you for Mr. Todd?

A. I have.

60 Q. Look at the four receipts now handed you and marked 59, 60, 61, & 62 and state what they are.

A. There is one letter dated Lake Village, July 3, 1872; that and the other papers referred to are in the handwriting of D. H. Reynolds. I file these as Exhibits 59, 60, 61, 62.

61 Q. Have you any other receipts for money paid out by you for Mr. Todd?

A. I have another receipt from Gen. Reynolds for money
672 paid for Mr. Todd. I file it herewith as Exhibit 63.

62 Q. Have you any bills of lading for cotton shipped to Gen. Reynolds—for cotton shipped for the Yellow Bayou plantation?

A. I have. I file these herewith as Exhibits 64 to 73, inclusive.

63 Q. Look at the two papers now handed you and state what they are.

A. Receipts for money paid to Gen. Reynolds; the first one for William H. Todd, and the second for money to pay on the real-estate bank mortgage on the Bellevue place. They are herewith filed, marked Exhibits 74 & 75.

64 Q. Have you in your possession any reports of sales of cotton raised on the Yellow Bayou place?

A. I have. I attach these hereto as Exhibits 76 to 84, inclusive; these are an account of sales made for the benefit of Gen. Reynolds.

65 Q. Is Gen. Reynolds an attorney?

A. He is.

673 66 Q. Whom did he represent in these various transactions?

A. He represented William P. Halliday, Jurey & Gillis, McMurray & Co, I think C. W. Fry and D. H. Reynolds, and I do not remember the others; I remember also Richard Scott and Miss Emma J. Wright.

67 Q. Look at the letters now shown you and state w-ether they

are in the handwriting of Gen. Reynolds and were received by you soon after written.

A. They are and they were so received by me, and are herewith filed, marked Exhibits 85 to 90, inclusive.

68 Q. Look at the paper now shown you and see if it is also in the handwriting of Gen. Reynolds and w-ether you received it from him.

A. It is, and I received it from him. I herewith file it as Exhibit 91.

69 Q. Look at the paper now shown you and state what
674 it is.

A. It is a draft given by me in favor of Gen. Reynolds on Bussey & Co. for Wechkaw & Pendleton, of St. Louis, against Mr. Todd. I herewith file it as Exhibit No. 92.

70 Q. Look at the paper now shown you and state in whose handwriting it is.

A. It is in the handwriting of William H. Todd; it was given to me on the day it bears date by him. I file it as Exhibit 93.

71 Q. Look at the bill of lading now shown you and the account of sales, and state where the cotton was raised mentioned in them.

A. It was raised on Yellow Bayou and shipped to Reddick & Vickery for lumber used on the Yellow Bayou place; they are filed herewith, marked Exhibits 94 & 95.

72 Q. Look at the paper now shown you and state what it is.

675 A. It is a bill of lumber from Reddick & Victory for Bellevue and Yellow Bayou.

73 Q. Was that received by you from them?

A. It was. I herewith file it as Exhibit 96.

74 Q. Look at the paper now shown you and state what it is.

A. This is a receipt for money paid F. P. Walker for Mr. Todd on account of Yellow Bayou. I herewith file it as Exhibit 97.

75 Q. Was that money paid by you?

A. It was.

76 Q. Look at the paper now shown you and see what that is.

A. This is an order from Reddick & Vickers for payment for lumber used on Yellow Bayou, and it was taken up by me. I herewith attach it as Exhibit 98.

77 Q. Look at the paper now shown you and state what that is.

A. That is a bill for lumber used on Yellow Bayou and
676 paid by me. I herewith file it as Exhibit 99.

78 Q. Look at the paper now shown you and state what that is.

A. That is the receipt from Mr. Todd to me for the last payment of the undivided half of the Bellevue place. The body and signature are in the handwriting of Mr. Todd. I herewith file it as Exhibit 100.

79 Q. Look at the paper now shown you and state what that is.

A. It is a receipt from Gen. Reynolds for the amount of the judgment Jurey & Gillis held against Mr. Todd. I herewith file it as Exhibit 101.

80 Q. Did you pay out the moneys mentioned in all these receipts for Mr. Todd?

A. I did.

81 Q. What is the paper that is now presented to you?

A. The accounts current from Sonmons and Braun is for the crops of Bellevue and Yellow Bayou for 1869. I herewith file it as Exhibit 102.

677 82 —. What does the name Todd, written opposite some of these items, signify?

A. It signifies what Mrs. Todd used—that amount of money.

83 Q. Look at the paper now presented to you and state what that is.

A. That is account of mine probated against William H. Todd's estate, being the account of William H. Todd with Benjamin H. Smith and the Bellevue account. I file it herewith, marked Exhibit 103.

84 Q. Is that account true and correct?

A. It is.

85 Q. How is it made out—what from?

A. It is made out from the books.

86 Q. Your books of original returns?

A. Yes, sir.

87 Q. Were those entries made at or near the time the different items bear date?

A. They were.

678 88 Q. Look at the paper now shown you and state what it is.

A. This is a receipt for three notes given for the gin tract—for the west half of the northwest quarter of section 8; it is herewith filed, marked Exhibit 104.

89 Q. Was that signed by Carleton & Simms, attorneys?

A. It was.

90 Q. Look at the promissory notes now shown you and state what they were given for.

A. These three notes were given for the purchase of the gin lot—the west half of the northwest quarter of section 8; they are herewith filed, marked 105, 106, 107.

91 Q. Were those notes paid off and taken up by you?

A. They were.

92 Q. Look at the four receipts now shown you and state whether you paid out the money mentioned in them for Mrs. Todd.

A. I paid them all in money, except one, and the other 679 was paid partly in cotton and the balance in money. I herewith file them as Exhibit- 108, 109, 110, 111.

93 Q. Look at the note now shown you and state whether you paid that off for William H. Todd.

A. I did. I herewith file it as Exhibit 112.

94 Q. How much was Mr. Todd to pay for the Bellevue plantation?

A. Thirty-five thousand dollars.

95 Q. How much were you to pay for your half interest in it?

A. I was to pay one-half of what it cost.

96 Q. How does it happen that in the deed made by Todd to you the consideration is placed at nineteen thousand two hundred and fifty dollars?

A. The difference is the interest and attorney's fees—the interest between the time Todd purchased and the making of the deed to me.

97 Q. Did you and Mr. Todd have any dispute about the amount to be — you for your services?

A. I don't remember that we did.

680 98 Q. Did he want you to wait longer on him?

A. Yes, sir; he wanted me to wait.

99 Q. What reason did he give for wanting you to wait on him?

A. He had no money to pay it with; it took all the money he could get to pay the orders of the court for the purchase of the Craig estate.

100 Q. Have you any account of sales of cotton of Yellow Bayou other than those you have already filed?

A. I have.

101 Q. Have you got them with you?

A. I think I have. I herewith file them marked Exhibits from 113 to 131, inclusive.

102 Q. When Simmons was repairing Yellow Bayou gin who superintended and directed the work?

A. I was there every day to see that it was done properly.

103 Q. Did you make any alterations or additions to the work he was to do?

681 A. I made an agreement with him that he was to put new sills under the gin.

104 Q. Did you pay any Yellow Bayou cotton or any money, the proceeds of the Yellow Bayou cotton, to any other persons than those you have already named? If so, please state to whom and how much.

A. I gave cotton and money to H. W. Graves, S. H. Holland, Joshua Simmons, John Bergman, and there may be others that I do not remember.

105 Q. When Mr. Todd gave you credit for the payment on your half interest in Bellevue, made in proceeds of crop in 1873, was that a full settlement for all crop up to that time between you?

A. That was a full settlement of crops between us up to that time.

106 Q. What became of the cotton raised on Yellow Bayou and Bellevue since that settlement?

682 A. The most of the cotton raised on Yellow Bayou from 1873 up to 1876 was shipped by Mr. Todd or by me under his directions to Mr. Todd's account and to various other parties to pay his indebtedness, and from, say, the last of April or first of May, 1876, the balance was charged to my account; it shows in that account of mine probated against his estate. The Bellevue crop of 1873 was divided between us at the gin with the exception of thirty or thirty-five bales, which was shipped to our joint account and was charged to myself; the 1874 crop was shipped by me and

charged to myself; the 1875 crop was shipped by me and charged to myself; the 1876 crop was shipped by me and charged to myself, and the 1877 crop the same; that is as far as Mr. Todd had any interest in it; these four years, 1874, 1875, 1876, and 1877,
683 were four successive years of high water, and the crop was very short—not enough to pay the running expences of the place.

107 Q. What were the terms of *of* the partnership with Mr. Todd? Did you own the land named in the bill as a part of your partnership assets?

A. The lands were partnership property; we owned them jointly.

108 Q. State if you were to divide the profits and losses eaqually.

A. We were to divide them eaqually.

109 Q. When was the partnership formed, and how long did it continue?

A. From 1868 until Mr. Todd's interest was sold out in 1878.

110 Q. What was the nature of the services you rendered as superintendent and manager of the Yellow Bayou plantation?

A. I attended to the making of the crop, hauling it, ginning the cotton, dividing the same, shipping, and all other things
684 necessary to the management of the plantations. I paid taxes, repaired the levees, made fences, and built houses. I managed the business generally out of which these exhibits originate.

111 Q. While you were in charge of Yellow Bayou was there any demands made on you for *for* the possession of that property by any one or any writs of possession served on you by any one? State fully.

A. When Mr. Todd was dispossessed of the Yellow Bayou the writ from the United States court was served upon me, I suppose at the instance of Mr. Halliday's counsel, as Gen. D. H. Reynolds, in company with C. N. Fry, came to me in 1876 or 1877 and demanded the possession of Yellow Bayou under the Halliday sale.

112 Q. Did you ever leave Chicot county for any considerable length of time while you were superintending Yellow Bayou; and, if so, for how long?

A. I never left Chicot county but once, except for a few
685 days, from 1868 up to 1883, except in July, 1869; I went north and was gone about two months; I had a man to take my place on Yellow Bayou and paid him a hundred dollars a month and fed his horse.

113 Q. What was the condition of your health during the years you superintended that property?

A. My health has been good, with the exception of a spell of sickness I had in the spring of *of* 1869 and the fall of 1868.

114 Q. What was the condition of the country, as to water and overflows, while you were managing that property?

A. There was a general overflow in 1874, 1875, 1876, and 1877, which broke the Bellevue levees and washed away all the fence, so that it had to be put up new every year.

115 Q. Did those men that were under you, Scott, White, Sim-

mons, Kirk, and Mole, ever plant cotton before they went on the Yellow Bayou?

686 A. Neither Scott, Kirk, nor Mole ever did. Mr. White was an old overseer in slave times. He said Mr. Simmons was a gin-wright.

116 Q. What was the assessed value of the Bellevue in 1876, at the time of your purchase?

A. About seventeen thousand and five hundred dollars.

117 Q. Did Mr. Todd leave any property when he died?

A. He left nothing, so far as I know, except the judgements against Joseph S. Woodfolk in the Chicot circuit court, which has gone against him in the United States court here and has been appealed to the Supreme Court of the United States.

118 Q. Did Mr. Todd have any other general manager except you in Arkansas?

A. He did not.

119 Q. Were not Mr. Todd's matters very much involved in litigation while you had charge of his business?

687 A. It was. He had a great many lawsuits growing out of the purchase of the Craig estate.

Cross-examined:

120 Q. When did you first come to Arkansas?

A. The first time I came to Arkansas was in April, 1867.

121 Q. Did you remain in the State continuously from that time to this?

122 A. I did not. I left some time in April and came back again in January, 1868; I have remained here since that time.

123 Q. From what place did you come to Arkansas, and what was your business at that place?

A. I was from Brooklyn, New York; I was a seafaring man.

124 Q. How long had you been in the seafaring business?

A. From the time I was a young man.

125 Q. Did you ever have any experience as a cotton planter before you came to Arkansas in 1868?

A I had not.

126 Q. Was your business successful as a seafaring man, and did you bring with you capital to Arkansas from that or any

688 other source?

A. That was what I made my living at; Mr. Todd was owing me between nine and ten thousand dollars when I came to Arkansas.

127 Q. Was that your only property at that time?

A. I had money of my own beside that.

128 Q. Did you live at Philadelphia for a time or in that neighborhood before you came to Arkansas and after you left Brooklyn?

A. I lived in the neighborhood of Philadelphia for a month or two before I came to Arkansas.

129 Q. In what business were you engaged there?

A. None.

130 Q. For what did Mr. Todd owe you the nine thousand dollars?

A. For money loaned him at various times.

131 Q. I see while you were testifying that you frequently refer to a book that you hold in your hand. Will you please state what it is?

689 A. It is a memorandum-book.

132 Q. Will you please make it an exhibit to your deposition?

A. It has other matter in it which I do not want to put in there.

133 Q. Will you please take out the leaves which refer to the matters to which you are testifying and make them an exhibit?

A. There are matters in the memorandum which I wish to refer to hereafter and I decline.

134 Q. Do you hold a deed to Bellevue plantation under the sale on judgment of J. W. Cooper against William H. Todd?

A. I do.

135 Q. Was there any consideration that you paid for that?

A. I do not remember.

136 Q. Are you acquainted with this J. W. Cooper?

A. I became acquainted with J. W. Cooper this last June, 1883, or about that time; it was the first time I had ever seen him.

690 137 Q. Is he the coexecutor with you named in the will of William H. Todd?

A. I think that was what Mr. Waddell said; he had what he claimed to be the will of Mr. Todd.

138 Q. Did Mr. Todd own real estate in the city of Philadelphia in 1874, prior to his death?

A. I do not know, but I expect he did. He wrote me that he was selling property there from time to time.

139 Q. What property, or do you know?

A. I do not know what property he had; he sold property there from time to time, or at least he wrote so.

140 Q. Do you know w-ether Mrs. Smith, your wife, has any of that property at this time?

A. I learned in Philadelphia this summer that she did.

141 Q. From whom did she receive it?

A. I don't know from whom, but I understood from Cooper.

142 Q. Do you know the consideration that she paid for it?

691 A. I do not.

143 Q. What consideration did Todd receive from Cooper for it?

A. That I do not know; I was not there, and have not been there for many years before—for fourteen years before this summer.

144 Q. Why did not Mr. Todd confess the judgment for three thousand dollars in your favor as he proposed to do in his letter of June 30, 1876, exhibited with your deposition?

A. I do not know.

145 Q. Did you reply to that part of his letter?

A. I do not remember; I do not remember the circumstances at all.

146 Q. Did the fact that he offered in that letter to confess judgment in favor of others as well as yourself, including said J. W. Cooper, induce you to bring your suit by attachment against him?

692 A. I do not remember the circumstances you are speaking of, but it had no influence in making me bring my suit. Mr. Todd owed me money, and he had been putting me off from time to time, and Yellow Bayou had been sold for about eight thousand dollars; Jurey & Gillis had made an attachment against him and McMurray & Co. also. Gen. Reynolds was their attorney. Yellow Bayou was offered to be sold back to Mr. Todd for forty thousand dollars by Gen. Reynolds; it was well worth sixty thousand dollars, he said.

147 Q. Did Gen. Reynolds own Yellow Bayou?

A. Not that I know of. The letter was by Gen. Reynolds.

148 Q. What induced Mr. Todd to make the mortgage to you in August, 1876, just after your attachment, and including the property in the attachment?

693 A. I think that was to secure me for any money I might pay out for him on the Jurey & Gillis & McMurray & Co. judgments, or other judgments against him.

149 Q. I mean by what arguments was he induced, after offering to confess judgement and you had attached his property, to execute that mortgage?

A. I don't know of any argument or inducement made to him. I may say that he was aware that he owed me on the Yellow Bayou and Bellevue accounts.

150 Q. Mr. Todd says, in his letter of June 30, 1876: "As I owe you $3,000 for advances on the levee and other payments made on the purchase of the gin from the Woolworth estate and other outlays on the Bellevue place and cotton advanced or loaned me over my share, I will enter by a bond and judgment in the court here to

694 secure you in your just and lawful rights." What debts did he contract with you after that time and before you brought the suit?

A. I do not know of any, except what I paid out on Yellow Bayou and Bellevue.

151 Q. Please state what you paid out on Yellow Bayou and Bellevue between those periods.

A. I do not know. My account will show it.

152 Q. You mention that the mortgage by Mr. Todd was to secure money to be paid on the judgements of Jurey & Gillis and others. Was there any agreement between you and Mr. Todd that you should pay those judgements?

A. I was to pay off what the cotton on Yellow Bayou would pay outside of enough to pay for mule feed, I think he said, and outside of that what there was left was to be credited on my account against him.

695 153 Q. Were these judgments to be paid out of your own funds or Mr. Todd's funds?

A. A portion of the cotton that was on Yellow Bayou was attached by Jurey & Gillis, I think, in 1876, sixteen bales of which were shipped to D. H. Reynolds on account of the Jurey & Gillis judgment, after which I borrowed of Bussey & Co. to pay the balance, and paid to Gen. D. H. Reynolds the sum of eleven hundred and three dollars in full of the Jurey & Gillis judgment; also I paid Gen. Reynolds, out of the cotton on the Yellow Bayou, in the summer of 1876, one hundred and ninety-two dollars claimed due on the Scott judgment, Gen. Reynolds having attached ten bales of cotton during the high water of 1876, which Mr. Todd said would be enough to pay the Scott judgment, but the one hundred
696 and ninety-two dollars was claimed above that, and afterward sixteen dollars more, which was paid long after Mr. Todd died.

154 Q. Were these payments made with your money or cotton or with Mr. Todd's money or cotton?

A. Mr. Todd's money and cotton, paid by me; I was attending to his business.

155 Q. Please explain how it was that Mr. Todd — you a mortgage to secure you for paying his debts when they were paid out of his own funds?

A. Mr. Todd was owing me for my account against him for Yellow Bayou and Bellevue. I had paid out more than I had put in. I borrowed the eleven hundred and three dollars from Bussey & Co., without any cotton in sight to pay for it at the time.

156 Q. For what purpose and in whose name did you borrow that money?

A. I borrowed it in the name of B. H. Smith; I borrowed
697 it to pay the Jurey & Gillis judgment, which was due in December, 1876, or January, 1877.

157 Q. In whose charge was the property attached in your suit left by the officer, and by whose direction was it left?

A. In the Jurey & Gillis suit and in mine—both. I think they were left in the care of Mole, but I do not know at whose suggestion.

158 Q. What disposition was made of the mules and other property by the sheriff or custodian immediately after the levy?

A. The mules were worked on the place and used to finish the crops; the cotton was released to pay for the money I borrowed to pay the Jurey & Gillis judgment to Gen. Reynolds.

159 Q. Did the cotton pay more than the Jurey & Gillis
698 judgment; and, if so, what was done with the excess?

A. If there was any excess it went to pay other expenses of running the Yellow Bayou place and perhaps other debts, or for bagging, ties, &c., — far as I can remember.

160 Q. What crops were cultivated by the mules attached, and under whose direction were they so cultivated?

A. The crops on Yellow Bayou—under my directions, as they had been for years.

170 Q. Did not Mr. Todd make other mortgages to you subsequent

to the one in 1876 referred to; and, if so, for what purpose and what property did they contain?

A. I think he made me a mortgage on Yellow Bayou in 1877 and 1878 to secure me for moneys advanced or to be advanced for the Yellow Bayou place and Bellevue.

699 171 Q. Did your attachment suit cover all the property of Mr. Todd in Arkansas except the Yellow Bayou plantation?

A. I think it covered the Yellow Bayou mules and the cotton that was released and part of Bellevue not sold under the Halliday and McMurray sales, the undivided interest in section four, five, and eight. I do not know what other property he had; he may have had other property. I think there was some in section ten on Yellow Bayou. Mr. Todd had some lands in the other counties that I do not know anything about.

172 Q. Do those lands still belong to his estate?

A. I do not know.

173 Q. Did Mr. Todd have any interest in the personal property on the Bellevue plantation at the time you brought your suit.

700 A. We owned some mules jointly and the farming utensils.

174 Q. What became of the property?

A. It remained on Bellevue. I think I had a mortgage on that also. I think my mortgage covered our joint property on Bellevue also.

175 Q. Who owns that property now?

A. It is there now as it was then. I gave Mr. Springer a list of it some two or three years ago. There were two or three second-hand wagons, plows, and ten mules.

176 Q. Then you were in error when you stated that Mr. Todd left no property except the Woodfolk judgment, were you not?

A. I do not know that I was. I had a mortgage. I did not know my right at that time in the matter.

177 Q. You say the balance of Todd's interest in cotton attached in your suit and released by you after paying the debt of Ju-

701 rey & Gillis and McMurry's judgment went to pay Mr. Todd's creditors. Can you state what creditors?

A. McMurray's judgment was paid out of the sale of the Bellevue land; it was not paid out of the cotton; Scott's claim was paid out of it. Some was paid to Isaac Cohen and some went to pay attorney's fees and to furnish supplies for the place. McMurray was paid out of the sale of the east half of section six and seven. Sixteen bales was sold to pay the Jurey & Gillis judgment and sold for four hundred and seventeen dollars, I think; a little over twenty-five dollars per bale. I borrowed eleven hundred and three dollars of Bussey & Co., and shipped Yellow Bayou cotton to pay it. That went on the Jurey & Gillis judgment. Mole took two or three bales of the cotton that was on the Yellow Bayou, 1876. I do not recollect now what others.

702 178 Q. Was any part of it applied to his indebtedness to you?

A. I think not. The Jurey & Gillis judgment was ahead of mine.

The Scott judgment was ahead of mine. It was used to pay Mr. Todd's indebtedness.

179 Q. Were the judgments of Jurey & Gillis and of Scott liens on the cotton released?

A. The cotton had been attached for Juray & Gillis, and I do not know but it had been released by them; I think so.

180 Q. How released?

A. I do not remember how it was released; it was attached. Jurey & Gillis' agent came to me and wanted me to give my note for Mr. Todd's indebtedness, and said if I did not he would sue Mr. Todd immediately, and he brought suit immediately and attached the cotton. I think I refused to give my note for Mr. Todd's indebtedness. That was in June, before he brought the suit.

703 181 Q. Did you not give bond for Mr. Todd to release this cotton, with one Isaac Cohen security?

A. I think I gave a stay bond on the Jurey & Gillis judgment until December or January.

182 Q. A stay bond to release the attachment?

A. I think not; I think it was a bond to pay the judgment in December or January. I do not understand the matter so well; it was a stay bond.

183 Q. How many bales of cotton did you ship to pay the eleven hundred and three dollars borrowed from Bussey & Co.?

A. The total rent of Yellow Bayou was forty-one and one-half bales; that went to pay Bussey & Co.; and for that and some bagging and ties, and some other things got of them, and had paid about *about* seven hundred dollars of their debt when they
704 suspended. There were four hundred and *and* odd dollars due them when they suspended; then I shipped cotton to S. P. Newman & Co., and instructed him to buy up enough of Bussey's paper to pay off his indebtedness; he answered me that there was none of Bussey's paper could be bought for less than par. I do not remember what cotton was worth a bale that year.

184 Q. What crop did you ship to Newman & Co.?

A. Yellow Bayou cotton; raised in 1876, I think.

185 Q. In addition to the forty-one and one-half bales?

A. No, sir; that was *that was* made on the place in 1876; shipped to Bussey and S. P. Newman, and some may have been turned over to Isaac Cohen for his indebtedness that year, or rather Mr. Todd's indebtedness to Isaac Cohen.

705 186 Q. Was not the levy of the attachment in the Jurey & Gillis suit on cotton of the crop of 1875, then in pens and unginned?

A. I think it was, some of it; sixteen bales were of the 1875 crop. I believe that sixteen bales was shipped to Richardson and May to the account of Gen. D. H. Reynolds.

187 Q. How many bales, by estimate, were levied on in the Jurey & Gillis suit, and was the levy supposed to be ample to pay that demand?

A. I do not know how many bales were levied on. I think the

levy was on the mules also, or it might have been on the mules without the cotton; I do not recollect.

188 Q. If not sufficient, why did you give bond to stay payment?

A. I do not know about that. I am sure there was not enough to pay it. I gave the bond—I do not remember why I gave
706 it, but my impression was I gave the bond because there was not enough to pay it.

189 Q. Was this same cotton levied on in your suit?

A. I am not positive w-ether the 1875 cotton was levied on to pay the Jurey & Gillis debt, and if it was released before my attachment the sixteen bales shipped was a part of it, and that which went to pay the Scott judgment and for supplies for running Yellow Bayou was also a part of it?

190 Q. Then it was not in your attachment?

A. I cannot remember; it was not in mine if — had been shipped before my attachment.

191 Q. Was it in if it had not been shipped?

A. I expect it was.

192 Q. Did you have your attachment levied on some cotton of the crops of 1875 in the gin that was not levied on in the Jurey & Gillis attachment?

A. I do not know.

193 Q. Did not Mr. Todd, by letter, call your attention to
707 the fact that the cotton in the gin had not been levied on in the suit by Jurey & Gillis?

A. Mr. Todd was not in Chicot county when the Jurey & Gillis levy was made on the cotton.

194 Q. Estimating the cotton at its market price at the time of the levy of the Jurey & Gillis attachment, about how many bales would it have taken to pay their demand?

A. At the rate the sixteen bales sold for it would have taken about sixty bales.

195 Q. Did the sheriff levy the attachment in your suit on the growing crop of 1876 on the Yellow Bayou and on Todd's interest in the growing crop on Bellevue?

A. I think he did. The crop on the Bellevue was not enough to pay the running expenses, and, as I say, the eleven hundred and three dollars and the supplies for Yellow Bayou were paid out of the *crop* 1876 crops.

708 196 Q. About how many bales, by estimate, were in the field of that crop at the time of the levy?

A. I recollect that the crop was not grown then; it was not picked, at any rate. The crop of Yellow Bayou & Bellevue were almost failures that year, as they were in every other place on that country. The total rent of Bellevue in 1876 of cotton grown that year was thirty-nine bales, out of which taxes the bank mortgage and the running expenses of the place had to be paid.

197 Q. What part of the thirty-nine bales belonged to Mr. Todd?

A. He had a half interest.

198 Q. You mention that the crop of 1876 on Yellow Bayou and

Todd's interest in Bellevue was levied on, and that the crop of Yellow Bayou was forty-one and one-half bales, and Todd's interest in Bellevue was the half of thirty-nine bales, and that part of
709 the crop of 1875 was possibly levied on in your suit. Were you not in error then when you stated that there were only thirty or forty bales levied on? If not, explain.

A. I do not know how much was levied on. I do not know that the crop of 1875 was levied on. I do not remember about that.

199 Q. You say that you paid about four thousand dollars for the half interest in the part of Bellevue sold under your judgment; will you please state how much you paid for the personal property?

A. I think that included both.

200 Q. In what proportion?

A. I do not recollect.

201 Q. When did you buy from Mr. Todd the half interest in Bellevue mentioned in this deed to you of October, 1869; how long before the deed was made?

A. From the time I went to the Yellow Bayou in 1868 it was
710 understood that I was to have half of it, and he was to make deeds when he could.

202 Q. How did you pay the five thousand two hundred and fifty dollars mentioned in the deed; of what did the items consist?

A. That was a note I had against Mr. Todd.

203 Q. Was it a part of the nine or ten thousand dollars that he owed you?

A. It was.

204 Q. Where did you get the funds from to make the next payment?

A. That came out of my share of the cotton crop of 1868 and 1869, as well as I can remember.

205 Q. Where did you get the funds to make the final payment in 1873; from what sources?

A. That was for my share of the advances made in running Bellevue in 1870, 1871, 1872, and part of 1873, and for money loaned to Mr. Todd.

206 Q. When loaned?

711 A. I loaned him twenty-five hundred and fifty dollars on the 29th day of August, 1867. I furnished the money to run Bellevue in 1870. I think I bought all the supplies myself—I think about all. The cotton was divided at the gin in 1870 between Mr. Todd and myself. His half was shipped to his own account and mine to my account.

207 Q. You state that the last payment on Bellevue consisted of the twenty-five hundred dollars loaned in 1867 and of advances made for the crops; now, if these two items did not constitute the full payment, state what made up the remainder.

A. I think that made it all.

208 Q. What were the advances of each of those several years—1870, 1871, 1872, and part of 1873?

A. I do not recollect the amount for each year. The total amounted to eight thousand dollars and more. My receipt

712 in full for the payment of Bellevue was in 1873, more than ten years ago.

209 Q. In the item of eight thousand and odd dollars did you include all the advances made by you up to that time; I mean on the crop of those years?

A. That was a settlement made by Mr. Todd and myself in full for the matter on cotton crop between us at that time in Chicot county; we paid besides that two thousand dollars on the gin which came out of the crop of 1872.

210 Q. Was it intended to include all the items of expenses making such crops, as well as the twenty-five hundred dollars loaned?

A. It did not include my charges for services.

211 Q. Did it include everything else but your services?

A. I don't remember; Mr. Todd and myself had other matters between us.

713 212 Q. Was the twenty-five hundred dollars included in this settlement evidenced by a note; and, if so, at what rate of interest did the note bear and its date?

A. It was a check; it was on the Central Bank of Brooklyn. I attach — as Exhibit 132.

213 Q. What was this twenty-five hundred and fifty dollars for?

A. I loaned it to Mr. Todd.

214 Q. Why was it not included in the first payment on the lands?

A. I am not even sure that it was included in the last payment. My belief is that Mr. Todd owes me that money now.

215 Q. Then you are not certain that it was not included in the first payment?

A. It was not included in the first—I am sure of that. The note for five thousand dollars I had against him he has taken up; it was included in the first payment.

714 216 Q. What was the date of the five thousand dollar note?

A. I think it was the last of December, 1865, or the first of January, 1866.

217 Q. What items went up to make up the nine or ten thousand dollars you speak of as owing you by Mr. Todd?

A. I loaned him money several times between the first one and this; I also loaned him money in 1864.

218 Q. Was any part of that indebtedness, except the five thousand dollars, ever been paid to you; and, if so, how much?

A. I think there was eleven hundred dollars of it used in the first settlement on Yellow Bayou that was loaned at another time; that went into the mules on Yellow Bayou. Mr. Todd bought the mules. Some of them were bought from McMurray & Co. He bought them on his own account and I gave him a note of
715 eleven hundred dollars, which he owed me as payment of my share; he paid for them years afterwards. The eight hundred dollars paid McMurray was partly for them. He paid me the money borrowed in 1864 before we came down here. So far as I can recollect, this is all; the twenty-five hundred dollars may have

been in it. I cannot recollect. It has been a long time since this occurred.

219 Q. What was the total amount of expenses of 1870, 1871, 1872, and part of 1873, included in the last payment on Bellevue, above the receipt of those crops?

A. I do not remember. In a settlement between us I was entitled to the eight thousand and odd dollars outside of my claim for services. For this he gave me the receipt in April, 1873, I think, and I think it is also receipted on the margin of the deed in the clerk's office in Chicot county. The account was given to Mr. Todd,
716 I think, and I do not know what became of it.

220 Q. Why did you not, when you took the deed, credit on the purchase the whole of Todd's indebtedness to you at that time?

A. I do not know; he thought he could credit it some other time, and I was in no particular hurry about it.

221 Q. Were the current expenses taken out of the proceeds of crops each year before you divided profits in your settlements in 1870 and 1873?

A. In 1870 the crops were divided between Mr. Todd and myself at the Bellevue gin. Mr. Todd took his half without paying any expenses, except a portion of it may have gone in 1871 on account of taxes. In 1872 the crops were divided at the gin between Mr. Todd and myself, except two thousand dollars and something
717 more that was paid in taking up the first note on the Bellevue gin. In 1871 they were divided between Mr. Todd and myself, all of it; Mr. Todd got his half and shipped it to his own account; I got my half and shipped it to my account and paid the expenses out of it. In 1873 the crop was divided at the gin, with the exception of thirty or thirty-five bales, which we shipped jointly. This is as far as I can remember; it was a long time ago.

222 Q. Did this division you speak of include the crops on Yellow Bayou as well as on Bellevue?

A. I have been speaking there of — Bellevue, Yellow Bayou crops of 1870, 1871, 1872, 1873 belonging wholly to Mr. Todd.

223 Q. Did Todd receive the entire crop of Yellow Bayou for 1870, 1871, 1872, and 1873?

A. I think he did.

224 Q. Who turned them over to him?

718 A. It was ginned on the Bellevue gin. Mr. Todd was there a portion of the time in the winter, a small portion of the year, and the crop was his, and no one turned it over to him, and he shipped it to his own account; I attended to the ginning for him.

225 Q. Do you mean that you divided the crops in Bellevue in gross without reference to the expenses, except such as you have mentioned?

A. That is my recollection.

226 Q. Who paid the expenses of those crops?

A. My recollection is that I paid them, except as above stated.

227 Q. Did Mr. Todd pay you anything out of the crops of 1873,

1874, 1875, 1876, and 1877, not credited in your account probated against his estate, as mentioned in your examination-in-chief and exhibited?

A. Not to my remembrance.

228 Q. Have you more than one account probated against Mr. Todd's estate?

719 A. The account filed is the Yellow Bayou and Bellevue account; the balance of my judgement against him is probated outside of what is credited on it.

229 Q. Do these accounts cover the entire indebtedness of Todd to you at the time of his death?

A. I think they do.

230 Q. Who was present when the contract for services was made between you and Mr. Todd?

A. Mr. Todd, his wife, and myself.

231 Q. Any one else?

A. Not that I know of.

232 Q. Are Mr. and Mrs. Todd both dead?

A. They are.

233 Q. Was this contract verbal or in writing?

A. Verbal.

234 Q. When was it made?

A. It was made in November, 1867.

235 Q. Where was it made?

A. At Mr. Todd's house, corner of 18th street and Montgomery avenue, Philadelphia.

720 236 Q. Did you at that time have any experience as a cotton planter?

A. I did not.

237 Q. Did you ever mention this contract to Mrs. Smith, your wife?

A. I do not know that I ever did; she may have heard me talk about it; I do not remember.

238 Q. Did you and Mr. Todd ever mention it in her presence, or in the presence of any other member of the family?

A. Soon after that time I came to Arkansas, and seldom ever saw Mr. Todd's family, except occasionally one coming South. I have only been North once until this summer since 1869. Mr. Todd's family lived in Philadelphia. His children were very young at that time, with the exception of two. When they came to Arkansas they lived on Yellow Bayou; none of them were ever on Yel-

721 low Bayou except one while I was there.

239 Q. Were you not a frequent visitor at Yellow Bayou during the time that Mr. Todd and other members of his family would be on Yellow Bayou from time to time prior to 1877?

A. Mr. Todd was not on Yellow Bayou much, or his family either. Mrs. Todd was there in the winter of 1870 or 1871 and died there in May, 1871, I think, after which Mr. Todd's visits were not as lengthy as they were before; in fact Mr. Todd was very little in Chicot county, or his family either. They did not like it, and could

not live there. I frequently visited him when he was in Chicot county.

240 Q. Did not Mrs. Smith spend a good part of her time after the making of the contract in Chicot county in each year?

A. Mrs. Smith never spent much of her time in Chicot
722 county; a short time in the winter and spring. She does not enjoy good health there, and neither does she like the county; she lives in Philadelphia most of the —, and is there at present.

241 Q. Were you to be paid by the year or by the month at the rate of a thousand dollars a year?

A. By the year; and consider it but very little for what I had to do for Mr. Todd; hardly worth mentioning.

242 Q. At what time or times during the year did your salary become payable?

A. I commenced about the first of January, 1868, and proceeded to act as long as Mr. Todd continued to live or until he had no interest in Chicot county, which was about 1879, when he was dispossessed of Yellow Bayou and died soon after.

243 Q. Did your salary become payable at the end of each year?

A. If it did I did not receive it or any part of it—I mean except what I got in my judgment.

723 244 Q. Your account sued on calls for interest. Will you please state at what rate you charged interest and from what time or times?

A. I do not know that there is any interest charged on it; I do not remember about that.

245 Q. I hand you Exhibit A to the original bill in this case, which contains a copy of the account sued on by you; please examine that account and say whether it embraces interest or not?

A. I cannot say whether it includes interest or not; there does not appear to be any interest in that from its looks.

246 Q. Who was your attorney in that case?

A. James F. Robinson.

247 Q. Who prepared the account upon which the suit was brought?

724 A. I expect Maj. Robinson did it. It was for eight years' (8) services, at one thousand dollars a year, commencing on the first day of January, 1868. There may be an error or omission in that exhibit.

248 Q. What date does this account bear?

A. August 4, 1876. My impression was that my suit was for eight years, from the first of January, 1868, to the first of January, 1876. There may be some error in that exhibit.

249 Q. Assuming that the exhibit is correct, by what mode of calculation did you make the amount due you at the time of suit eight thousand dollars, or was that merely taken as an approximate sum?

A. I do not assume that the exhibit is correct, for I do not know whether it is correct or not.

250 Q. Did you swear to the correctness of the account upon which suit was brought?

725 A. I think I did. My recollection is that it was for eight years, from the first of January, 1868. That is what I intended to have done, but there may have been some mistake about it.

251 Q. Did you examine the account before you swore to it?

A. I told my attorney to bring suit against Mr. Todd for eight years' services, beginning the first day of January, 1868.

252 Q. Does not the item of one thousand dollars, charged in your probated account for 1876, represent your salary for that year?

A. I think it does. I charged Mr. Todd from the time I went there in 1868 up to 1878. I think the suit was intended to cover eight years, from the first day of January, 1868, to the first day of January, 1876. I put in my probated claim for *for* services from January first, 1876, to 1878. I charged for half year's services in 1878.

253 Q. What do you mean, then, by saying in your account
726 that it is from January 1, 1869, to date?

A. There seems to be some error there somewhere. My intention was to have it cover from January 1, 1868, to January 1, 1876; there may be some error there; it may be the fault of the clerk or of the attorney.

254 Q. Does not your probated claim cover seven months of time that is included in your account sued on?

A. If it does it is an error; there is an error somewhere.

255 Q. Did not you and Mr. Todd work Yellow Bayou in partnership in 1868?

A. We did—Yellow Bayou and Bellevue both. I paid a rent on Yellow Bayou of one thousand dollars in 1868 and two thousand in 1869. We cultivated them both years in partnership.

256 Q. To whom did you pay this rent?

A. I paid it to Mr. Todd; no rent on Bellevue.

257 Q. Was the account probated against the estate of Todd
727 of which you have filed a copy here taken from the books of original entry—is it a correct copy of your book account with Mr. Todd?

A. It is; they are taken from the original books.

258 Q. Who kept these books and where are they now?

A. I kept them; I think I have them in the Capitol Hotel.

259 Q. Were your accounts from 1868 to 1873 kept in the same book?

A. No; they are not in one book, nor from 1873 on in the same book.

260 Q. Have you the books that contain these accounts, and where are they?

A. From 1868 to 1873 I do not know where the accounts are.

261 Q. How were these accounts kept from 1868 to 1873?

A. From 1868 to 1873 Mr. Todd had some accounts of his own that he paid from 1873 on; I think I have them.

262 Q. Did you keep a regular debit and credit account

728 with Mr. Todd showing amounts received and amounts paid out from 1868 to 1873 in a book?

A. My impression is that it was in two or three books, and I do not know where they are.

263 Q. Where were they when you last saw them?

A. I think one was on Yellow Bayou in 1870; I do not know where the others were or are.

264 Q. Did you charge up your salary each year or for any year during the time you were in services for Mr. Todd in your book on account with him? If you did so enter, please point out the entries in the account filed for the years covered by the account, indicating the page of the account and the item where it is found; if you did not, please state why; and if you charged for some years and did not charge for others, please explain why some years were omitted.

729 A. I have a book where I kept that separate, I think, for each year, but there may be some years omitted; it is a small memorandum book. I do not understand your questions.

265 Q. You have exhibited an account, No. 103 to your deposition. Does that account contain any charge against Mr. Todd for services; if so, for what years?

A. It contains a charge for 1876, 1877, and half of 1878.

266 Q. Did you have any settlement with Mr. Todd after the one of 1873? If so, was any of your salary taken into account; and if not, why not?

A. I did not have any settlement with Mr. Todd after 1873.

267 Q. Why did you not take out your salary when you divided the crop of 1873 at the gin?

A. Because Mr. Todd wanted all he could get to pay his indebtedness and wanted me to wait.

730 268 Q. Who purchased the Bellevue property at the sale under the execution of Cooper against Todd?

A. Maj. Robisson, I think, and it covered all Bellevue and Yellow Bayou; it is a judgment junior to mine, McMurray & Co., and Halliday. The land had all been sold previous to that.

269 Q. What did he pay for it?

A. I do not know what he paid; I paid him what he paid and his fees in the case against Cooper.

270 Q. Did he represent Cooper in that suit?

A. I think he did.

271 Q. Can you explain why the judgment in favor of Cooper was for over six thousand dollars, while the original bond given by Todd and on which the judgment was rendered in Philadelphia, and which is on file among the papers in the suit in Chicot —, is for only

731 thirty-one hundred and fifty dollars, the amount mentioned by Todd in his letter of June 30, 1876, as being due to Cooper?

A. I do not know anything about Cooper's matter in Philadelphia. I have frequently heard Mr. Todd say that he owed Cooper, and I have not been to Philadelphia for fourteen years until the last June.

272 Q. Did not Mr. Todd inform you that Mr. Allen threatened to sue him in Philadelphia and that he proposed to confess judgment in favor of this man Cooper so as to be in advance of Allen's suit, or something to that effect?

A. Mr. Todd frequently told me who he owed. I do not recollect about or do not know that he confessed judgment in favor of Cooper in Philadelphia. He never told me that he would confess judgment for Cooper to keep Allen out.

732 273 Q. Did Mr. Todd make any defense to the Cooper suit in Arkansas or did he confess judgment?

A. I do not know w-ether he defended or confessed judgment. I know nothing about it, except from heresay.

274 Q. You say that Mr. Waddell said Mr. Todd left a will. Do you mean by that that you do not know w-ether he left a will or not?

A. My wife may have written me that he left a will when he died. I mean to say I never saw it until I got to Philadelphia, where Mr. Waddell had a copy of it.

275 Q. Was that your first knowledge that he left a will?

A. I say my wife may have written that he left a will; I am under the impression that she did. She was in Philadelphia at the time of her father's death, or, rather, arrived there before he

733 was buried, but I had never seen any copy of it until I arrived at Philadelphia this summer.

276 Q. By saying that you do not know what consideration Mrs. Smith paid Cooper for the Philadelphia property of Mr. Todd, do you mean that you do not know the exact amount or merely that you do not know anything about —?

A. What I know about it I learned from what Mr. Cooper testified in this suit. He told about the matter, and the real estate agent testified at the same time as to how much Mrs. Smith had received and how much she had paid out; also the incumbrance on and the assessed value.

277 Q. Did not Mrs. Smith write and consult you about taking the deed before she took it?

A. She did not. Mrs. Smith lives in Philadelphia and has

734 money and property in her own right which she received from her mother's estate.

278 Q. Did not Mrs. Smith visit you in Arkansas at various times—sometimes remaining several months—and did she not mention to you the will of her father and the disposition of the property in Philadelphia after his death?

A. Mrs. Smith visited me generally about Christmas or New Year's and remained for two or three months; but she never said that her father left any property. On the contrary, she said he did not leave enough to pay his funeral expenses. They have not been paid yet, except her share, which she paid herself. That is all that has been paid on those expenses.

279 Q. What was that share?

A. Her share as one of the children; there were six of them, I think.

735 280 Q. Did you inform Mr. Todd that you had sued him and caused his property to be attached shortly after it was done?

A. My impression is that I did either before or after suit. I think I notified him before suit that I was going to do so.

281 Q. Did Mr. Todd make a written contract with Mr. Simmons to repair the gin on Yellow Bayou?

A. Not that I know of. I never heard of any written contract from Mr. Todd.

282 Q. Did he make any contract for the repairs of the gin?

A. Simmons was employed to repair the gin and did repair it, but not well.

283 Q. Was there any price agreed upon before he commenced the work—for the work that was to be done?

A. My impression is that there was a price, but I do not know the amount or have forgotten it.

736 284 Q. Why did you change the contract between Mr. Todd and Mr. Simmons by ordering new sills put in the gin—that is, how did you come to make the changes?

A. When the gin was raised the sills were found to be rotten and it was necessary to have new ones.

285 Q. Did you do that under your authority as general manager and superintendent of the place?

A. I did.

286 Q. What price did you pay for the sills?

A. I think it was a hundred dollars or more.

287 Q. Was not Mr. Simmons employed by Mr. Todd and promised a salary to look after matters on Yellow Bayou other than the repair of the gin?

A. Mr. Simmons was to look after the mules, feed them, and, he says, watch the house at night. He work- on Bellevue
737 gin for nearly a month after finishing the Yellow Bayou gin, and was employed there during the day.

288 Q. When did Mr. Simmons say that he was to watch the house at night?

A. He said he was to work where he wanted to, so he was to be at Yellow Bayou at night. He said so in his deposition in this case at Lake Village, Arkansas. Mr. Simmons was gone at one time three weeks to his own place on Gum Ridge in 1874. He worked also on the Bellevue gin in 1874.

289 Q. Who employed Mr. Simmons to stay on Yellow Bayou?

A. Mr. Todd.

290 Q. What was he to pay him for staying there?

A. I think about fifty dollars per month.

291 Q. Was he to furnish him any horses or any house-room for his family in addition?

A. No provisions, but I think one room in the house. I suppose he used the horses on the place if he wished them.

738 292 Q. Do you know w-ether he used the horses on the place or not?

A. I do not remember seeing — riding.

293 Q. How many rooms were in the house?

A. I think there were two rooms in the old Yellow Bayou house and the kitchen.

294 Q. Was this the same house occupied by you when you were living on Yellow Bayou?

A. It is.

295 Q. Is it the same house that Mr. Todd used when his family were living on Yellow Bayou?

A. It is.

296 Q. You speak of Mr. Simmons being discharged and it took some time to get him off the place; did he not refuse to give up the possession and control of Yellow Bayou because Mr. Todd did not pay him, and did not he retain possession and control to
739 force Todd to pay him?

A. Mr. Todd wrote me, I think, in July, August, or September to discharge Mr. Simmons; it was some time in the summer of 1874; and also to make arrangements to pay him, and I did tell him that I would pay him in full if he would leave. He refused to leave then. I told him I would pay him, and he refused to leave. He could have got his money any time if he had left.

297 Q. Did not Mr. Simmons report directly to Mr. Todd under his employment for services on Yellow Bayou?

A. I think not. He may have written to Mr. Todd.

298 Q. Do you mention eighteen thousand dollars as the nominal amount of the real-estate bank lien on Bellevue or as the currency value of that lien?

A. The eighteen thousand dollars can be paid in Ark. funded sixes; I believe non-Halford.

740 299 Q. Were those encumbrances on that property when Mr. Todd bought it—I mean the Woodfolk mortgage and the real-estate bank lien?

A. The real-estate bank mortgage was on it. The Woodfolk mortgage was given by Mr. Todd after his purchase of Bellevue in 1868.

300 Q. Do you mean that the purchase of Bellevue is as made in 1868, or the mortgage, or both?

A. Bellevue was sold in March, 1868, by the receiver in the Craig estate. It was purchased by Mr. Todd. After he had got possession of Yellow Bayou and Bellevue the sale was made. He got possession in January, 1868. Mrs. Woodfolk had a fourth interest in the Bellevue property, and the mortgage grew out of that, after
741 which, in October, 1868, Mr. Todd made me a deed to an undivided one-half of it; I was to pay one-half of the purchase-money. He warranted it to me free from the Woodfolk debt. This was in the deed; it was a general warranty deed.

301 Q. Did not Mr. Todd inform you, shortly before the sale under judgment in favor of Halliday and McMurray, that he had a defence to the Woodfold mortgage?

A. Gen. Pike told me, and Mr. Todd told me also, that Woodfolk never could collect that debt in Arkansas, but the result was otherwise. If he did tell me so, there has been a decree against the land since in the United States court at Little Rock.

302 Q. Was there any effort on the part of Woodfolk to enforce his mortgage before the expiration of the term for redemption
742 under those sales under the McMurray and Halliday judgment?

A. I do not know that there was, but the mortgage was existing and has since been foreclosed.

303 Q. Does the plat, Exhibit No. 1, of the survey of part of Bellevue show all the cleared land in section six and seven at this time?

A. I think it does; all that is susceptible of cultivation and all land that has not been cultivated since the war has grown up; and if there is any outside of that it has been overflowed every year and impossible to make a crop on it.

304 Q. Does this plat show all the cleared land in those sections in 1876 and 1877?

A. I think it does.

305 Q. What were your instructions to the surveyor in making this survey as to the lands that were to be included in it?

743 A. All that was or had been in cultivation since I had been on Bellevue.

306 Q. Did the survey cover that?

A. I think it does; it covers all that has been in cultivation, and more than was in cultivation in 1876 or 1877.

307 Q. Is not all the land that is cleared and including in those sections susceptible of cultivation?

A. All the cleared land is; the plat shows 309 acres susceptible of cultivation.

308 Q. Did Mr. Scott teach a colored school on Yellow Bayou for Mr. Todd?

A. Mr. Scott taught the colored school for the school commissioners, I suppose. He did not teach it for Mr. Todd. He was paid by the school commissioners or some one in that position.

309 Q. Why did you not release your attachment on Todd's personal property when he gave you a mortgage covering the property?

744 A. I do not know for what reason, unless I consider my attachment better than the mortgage.

310 Q. How long did Mr. Mole remain on Yellow Bayou after the levy of your attachment?

A. Mole left, I think, about June, 1877; I do not remember just how long it was after my attachment.

311 Q. Where were the mules and other personal property levied on under your attachment left?

A. They were left on the place where they were, so that the crop could be carried on and not interfere with the business.

312 Q. What use were they put to after the crop of 1876 was disposed of, and from that time till they were sold?

A. They remained on the place.

313 Q. Did they make the crop of 1877?

A. They did.

745 314 Q. Were they used in 1878 up to the time of sale?

A. They were used up to the time of sale.

315 Q. Who used them in 1877 and in 1878?

A. The Yellow Bayou mules were used to make the Yellow Bayou crop, without which there could have been no crop made on Yellow Bayou.

316 Q. Under whose superintendence was the Yellow Bayou crop of 1877 made?

A. Under mine.

317 Q. Did they remain on Yellow Bayou after the sale to complete the crop of 1878?

A. They did up to the time when Mr. Todd was dispossessed.

318 Q. Whose crop was made on Yellow Bayou in 1878, and who superintended?

A. It was Mr. Todd's crop, and I superintended it, and had a man by the name of Charles Moran to take care of the mules.

319 Q. Did Mr. Simmons' family reside on Yellow Bayou
746 in the residence while he was attending to matters there for Mr. Todd?

A. I think they did for a part of the time. A good deal of the time they were on his place. He has a place on Gun Ridge.

320 Q. Did Mr. Todd pay you for the use of the mules in 1878, after the sale?

A. He did not; he had nothing to pay with.

321 Q. Did he owe you that?

A. He owed it if I had charged it; I never charged that; there are other matters I never charged him for.

322 Q. Did you state fully the duties of the men—Scott, Mole, Kirk, Simmons, and White—that Mr. Todd had on Yellow Bayou from 1870 to 1879, when requested so to state in your examination-in-chief?

A. I think so, to the best of my recollection.

323 Q. Was not Mr. Horrigan, then, on Yellow Bayou in 1871 for Mr. Todd?

747 A. Horrigan came down in the fall of 1871 and was taken very sick and went away. I had him to take care of while he was sick.

324 Q. Were Mole and Horrigan related to Mr. Todd by marriage or otherwise during the time they were on the place or otherwise during the time they were on the place or afterwards?

A. Horrigan was married to one of Mr. Todd's daughters. At the time Mole went there Mr. Todd had never seen him or heard of him, I reckon, but has since been married to Mrs. Bolivar, Mr. Todd's daughter.

—. Did Mr. Todd uniformly, or even usually, return home from Arkansas as early as March in each year?

A. Sometimes he went in March; one year, I think, he stayed till May. In 1868 and 1869 he only stopped there a few days at a time.

325 Q. Did he not often stay in Arkansas until April and May, and even at times until June?

748 A. I think not; I think he never was in Arkansas in June since I have been there; he could not stand the Arkansas climate.

326 Q. Whom did you leave on the place in 1869 when you went North?

A. A man by the name of June Niland.

327 Q. Is he living or dead?

A. He lived in Chicot county and died several years ago.

328 Q. You say you had no experience as a cotton planter prior to 1868; then were not Mole, White, Kirk, Simmons, and Horrigan as well qualified as you were to take charge of Yellow Bayou for Mr. Todd?

A. I said I had none prior to 1868, but have had a good deal since the first of January, 1868. Scott had never stayed there but a short time and Kirk remained but a short time and has not
749 since been back. Simmons and Mr. White lived in Chicot county, and I do not — what their experience had been or has been since. Mr. Simmons called himself a ginwright.

329 Q. How — did you visit Yellow Bayou plantation to see about the crops?

A. I do not recollect how many times, but many times.

330 Q. I do not mean in the aggregate, but during the cotton season?

A. Really I do not recollect, but I have been there many times. I had to ride over that part of Bellevue, which was right at Yellow Bayou, and would ride right over there and then back.

331 Q. Were not the men, Mole, Kirk, Simmons, White, and Scott, paid at the rate of six hundred dollars a year or more for their services on Yellow Bayou?

A. I think Mr. Scott had a dollar and a half or two dollars
750 a day for building houses there, while a good carpenter could not have been had for less than six to eight dollars a day. He did his own cooking and built several houses while he was there. I think he drew his wages while he was teaching school. I think the others had about fifty dollars a month.

332 Q. How long did Mr. Scott remain on the place?

A. I think Mr. Scott came on Yellow Bayou at January, 1870, if I mistake not, and remained until the fall of 1871. He was there before I left Yellow Bayou.

333 Q. You mention that Scott was paid by the day. Was he paid for his services from time to time as the work progressed?

A. I think he was paid some from time to time, but not in full.

334 Q. Could you state about how much had been paid in those small sums?

751 A. I do not know, and do not know how much there was due him when he left.

335 Q. Was not Mr. Simmons paid for repairing the gin a sum of money over and above what he received for salary for services on Yellow Bayou?

A. I think the repairing of the gin was over the salary.

336 Q. State fully the exact terms of the contract between you and Mr. Todd for services on Yellow Bayou and Bellevue plantation—for your services I mean.

A. I was to superintend and manage Yellow Bayou and Bellevue

and to manage his business generally in that county, as he could not live in the South. Mr. Todd had no experience in cotton planting himself. He had never lived in the South, and had scarcely ever seen a cotton crop. I was to have one thousand dollars a year for my services.

752 337 Q. Does that state the terms of the contract fully? If not, please state any other matters.

A. I think it does.

338 Q. Who, besides yourself, Mr. and Mrs. Todd, knew of your contract for services?

A. I do not know of any one else but Mr. and Mrs. Todd; every one there knew that I was there and was transacting his business. I was there not only one year, but every year while he owned the places.

339 Q. Was not Mrs. Bolivar the purchaser of the Yellow Bayou property at the first sale under the Halliday judgment in 1876?

A. I believe she was.

340 Q. Who bid in the property for her at that sale?

A. I did.

341 Q. What was her relationship to you and Mrs. Todd at that time?

A. She was Mr. Todd's daughter and my wife's sister.

753 342 —. Did she at the time have the means to pay for the property at the expiration of the credit of three months on which it was sold?

A. I do not know what she had. I had never seen her from 1867 to 1875. She got money from her mother's estate. I do not know what she did with it or how much she had at the time.

343 Q. Who went on her sale bond as surety.

A. Really I do not know. I do not know that there was any.

344 Q. Do you know that Mr. Todd went on the bond as surety?

A. I do not know; he may have done so. Mr. Todd did a great many things that I did not know of. I expect the bond would show.

345 —. Do you not know that Yellow Bayou was sold under execution on the sale bond?

A. Yellow Bayou was sold again after that.

754 346 Q. Is Mrs. Bolivar the same person who has testified in this case as Mrs. Mole?

A. I think she is.

Re-examination:

347 Q. What were Mr. Todd's circumstances when you made your purchase of the half of Bellevue in 1868?

A. In 1868 Mr. Todd had a mortgage on sixty thousand dollars against Yellow Bayou and had bought the Kelley claim and had paid twenty-five or thirty thousand dollars for that. He owned property in Philadelphia; how much I do not know.

348 Q. Who supplied your household expenses while you were attending to Yellow Bayou and Bellevue plantation?

A. I paid all my household expenses on Bellevue ever since I have

been there; since 1870 up; the two years on Yellow Bayou they were paid for jointly.

349 Q. Did you ever see the original will of Mr. Todd?

755 A. No, sir.

350 Q. You stated in your cross-examination that you came from Brooklyn, and that you were a seafaring man; state what you mean by a seafaring man; were you a ship-owner, or officer of a vessel, or a sailor?

A. I was master of a vessel and owned an interest in connection with Yates and Porterfield.

351 Q. Give the name and class of the vessels and the interest you owned.

A. The John H. Kennedy was one—a brig. I owned three-fourths and Yates & Porterfield owned one-fourth. The Sarah E. Kennedy —a brig—I owned one-sixteenth interest; Yates & Porterfield and others owned the balance. The bark Monata, of which I owned one-sixteenth and Yates and Porterfield the balance. At another time, the bark Mendi.

BENJ. H. SMITH.

756 Endorsed: December 26, 1883. Ralph L. Goodrich, clerk, by W. P. Feed, D. C.

(Here follows diagram marked page 757.)

758 EXHIBIT 2.

DEAR CAPT.: I got Johnson's receipt for 4 bales & have it here. I desire you to go to-morrow to Lake Village for me. If I ever needed it, do now; feel well but weak, & cannot go myself if the skies fall.

Mar. 23rd, 1876.

Yours truly, WM. H. TODD.

EXHIBIT 3.

PHILA., *June 30th*, 1876.

Yours of the 24 instant come to me this morning, and it found us all well and very warm weather indeed. I enclose you every paper I have, except a long letter of '69, not on the subject of our accounts, much rather on busyness of getting his brother-in-law. in partnership with me & get you out of the country. In one of these letters he states I claimed a credit of 1 bbl. flour, $10. I claimed a credit of 2 bbls. flour and 100 yards of baggin-, which is charged in my account, no one yard of which ever come on my place. I spoke to him once about it and afterwards borrowed the baggin- of Hermah Ford, and I never had on my place at any time one yard of baggin-

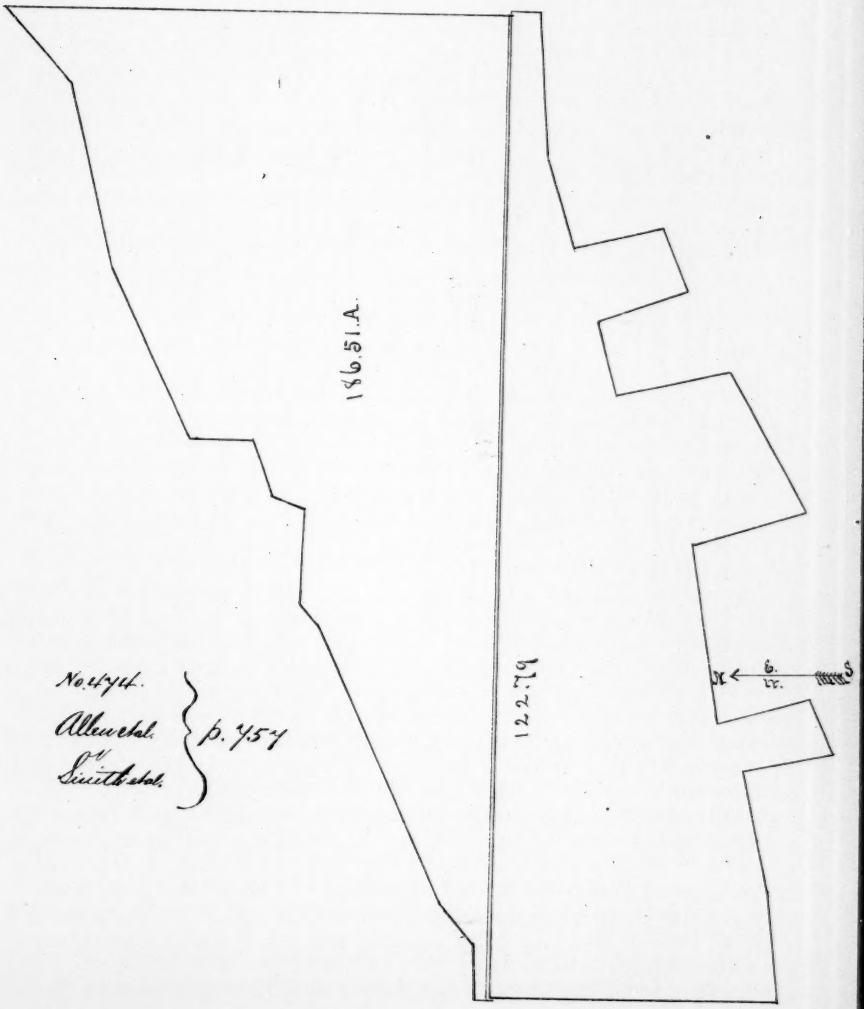
759 from McMurray's. I can prove by Braden, Hannah Ford, H. Turner, & perhaps all the force on the place that they never brought a yard of baggin- from McMurray's to my place. The cotton he alludes to from some hand he said was to go — R. H. Todd's account is not correct. I never agreed to any such thing in my life. The first transaction I had with McMurray was the pur-

Exhibit 1.

Plat of parts of sections 6 & 7
Township 15 S. R. 1 W. showing land
in cultivation & fit for cultivation.

Sec. 6 - 186.51

" 7 - 122.79 = 309.30



chase of mules and scrip to pay the taxes on the Braig land, I think, in Chicot county. The amount of the note given was $1,800; ten per ct. was included in the face of the note, as well as I recollect. This is the only am't of money on which I agreed to pay 10 per ct. on in all our dealings, and the bbls. flour & 100 yards of baggin- I never had at all. I have not his accounts in my hands. Please ask my Robertson to call on him for the whole account from begin-ing to the end of our dealings & take of- the difference between 10 per ct. & the legal interest & the 100 y'ds baggin- & 2 bbls. flour & the receipt you hold for me of his, & the balance will appear surely.

Allen, of Memphis, refuses to receive the proposed mortgage on stock-growing crop, &c., and I have no reply from Jurey & Gillis, so that ends that matter. I think it likely that there may
760 be sufficient cotton on the place to gin out to pay Gillis & Cohen; also do with those claims the best you can. Allen will sue me, *how* he says, in July if I fail to pay him in 20 days. As I owe you $3,000 for advances on the levy and other payments made on the purchase of the gin from Wolworth's estate and other *out* outlays on the Bellevue place & cotton advanced or loaned me over my share, I will enter up a bond and judgment in the court here to secure you in your just and lawful rights, and J. W. Cooper three thousand one hundred and fifty-one dollars advanced at sundry times, & $3,140 due Brannin & Summers, and some other smaller amounts to secure just creditors, if others do press their claims. Mole wrote me that Willing did not levy on the cotton in the gin; if so, you can let Cohen have that, if you do not need it, for feed. I have sent Mr. Mole supplies from Memphis, but no feed. I was to pay the bank out at the Rock 1st Sept. I called at Dreskell's to-day, & they report in N. York 40 asked & 30 bid. 40 is what they asked me at the Manhattan bank in Memphis, when I came through. I am of opinion 36 will buy a large amount. When you see
761 Robertson tell him to make a bold and open move before the judge in open court for an injunction against Hulladay; whether he hears from Rose or not, draft the bill, claim all the equity he can, & argue it within an inch of his life, and speak nearly half a day. It will do good if he were to fail, tho' I think he will succeed. He has more solid sense than any lawyer at the Chicot bar. I have more inquiry about the sale of the mill within a few days. If anything seemly occurs I will drop a line. The supreme court, having heard the argument in the coal land suit & adjourned from Harrisburgh without giving an opinion, will sit the last Monday in July, one day, to hear motions, & I hope an opinion will be read out on that day in Phila.; if so, the wires will tell you through J. M. Janes & Sons, Memphis. Sorry the weather is dry & your corn planting is lost; but if a half crop of cotton is made on each place it is more than I could have expected. Try & manage to get some feed, if it is possible, and sell cotton to pay for hauling rails to fix the fences, &, if you cannot, write me word, and I must try & do something here. All our houses are
762 rented, & I am making all the repairs I can to keep tenants in to try & live on the rent & pay taxes & int. I am awfully

pressed, but will try and do the best I can. Your son Ben. is a noble little soul, doing finely, & my health is good, admid my troubles here & South. Nothing further at this time.

Truly your friend, WM. H. TODD.

EXHIBIT 4.

PHILA., *Sept. 7th*, 1876.

DEAR CAPT.: I am in receipt of yours of 31st Aug., post-marked at Memphis, the 4th inst. Well, I will tell you while I was reading yours Ninie & Ben. are asleep, after having past a terrible night, and I had just returned from a trip after the doctor, having dismissed Smeazy & engaged my old Doctor Morton. He came immediately & spent near an hour with Ben., & is doing his best to save the dear little fellow, and thinks he can do so, but of all diseases I ever had saw it is the most treacherous, one day presenting all hopes of speedy recovery & in the darkness of night a violent fever comes & the glans of the throat enlarge & the eyes run, & to mend the matter he is cutting two eye-teeth. All seem to come down on the poor
763 soul at one time to add to his ailments, & he has no appetite, & with all the changes for better than for worse I am hopeful you will see him all right again. Ninie is jaded & wayworn with loss of sleep & continued efforts to relieve the throat & allay the fevers. She has an excellent nurse & two aids to help her. The present Dr. does not give much medicine; the other one gave 100 prescriptions or more, so I got out of patience with expense & no improvement or changes for the better. Now, to other matters. The proposed cut-off will in due season take place; if it is done by help or by regular course of the stream it will throw us on a lake & far from a landing on the river. I would not feel much inclined to have the river any further off; the cost of transportation to any given land, after the cut-off is made, will in 20 years cost twice the price of the additional levy of 2 ft. in height, as that is the *apurned* benefit would follow in our favor. It might suit Major Street, Point Chicot Sanders & McMurray & poor John Cassady's estate, but with us I find no advantage, nor do I see any very objectionable features in the movement. Suffice it to say, I would not give one red cent to have it moved, nor would I offer objections to others trying the experiment, for, let it
764 stay as it is or be made, a levy is bound to be made on both Yellow Bayou & back & front on Bellevue, unless the levy is made below Gains' Landing a continuous levy, so a levy will have to be made on the present river or lake fronting Street's place. All he gains is the non-caving of his elegant farm & 2 ft. less levy; and the same of all the lands below Gains'. So what we gain in levying, less we have to pay for transportation to our new & distant landing; the place — uncertain, & hauling is hell in the South. So I would not pay a red to have it made or cut off, and for the benefit of others I would not oppose it. I have drawn on you at 60 days' date for $35, on yesterday, in favor of J. M. James & Sons, payable at the house of May & Richardson, N. O., to remit a few supplies to Mole.

Please give it your attention. In answer to the matter of the cotton to be applied to Cohen, as you had agreed to do so, I am sued here for money, but if I had it from the sale of the pittance of cotton left of '75 crop it would not pay me out. So use it as your judgment directs. I am trying to rent the mill at $1,800 a year, & after it is under way I hope to borrow more money on it to help Yellow Bayou. But there is one thing I have to keep my eye on—I have paid all my interest on mortgages, but to Fose I am behind
765 3 or $400, & this fall another 6 mo. comes due *due* on the mill. I may need from the South something to pay Fose his int. I am advised the mill, in full operation, will help me save money on it rather than let it be idle. So we will have to do the best we can under all the circumstances that surround us. I will try to raise on the mill 5 to 9,000 dollars additional. Would like to save the Y. Bayou place, and the more you pay to Cohen & redeem his mortgage the better chance we might have to raise a larger one on it to help redeem it & Bel'vue, if it is sold, or so much thereof as would be of most use to us. I thing a treaty is on foot to rent the mill, & I will do all in my power to get through, but don't see it all right now. I feel now inclined to let all North go rather than Yellow Bayou & Bel'vue. A letter has just arrived to my care from Manhattan Bank to Roberson, and I have seen nothing of him as yet. I presume he intends calling on me. I will write no more letters to insiders. So do the best you can with the crops on each place. You do not mention Y. B. in your letter. What is the prospect there in your judgement? I am — considerable expense to rent my house here. I will do all in my power to save your dear boy. Except Ben, all the rest of our family are well. I thing I have fully answered, & nothing more. Now write soon & often.

Your friend, WM. H. TODD.

766 I need not mention that all join in love to you. They always do. Evalyn was here yesterday and all are well, Jenny also, & Daisy is well & happy. Dick's children are nearly well. Hard times & plenty friends to borrow if I had city property to offer as security. Don't like to go to the country.

EXHIBIT 5.

PHILA., *6th Aug.*, 1877.

DEAR CAPT.: Yours of 29th July rec'd by Ninie this morning. Ben. has been very sick with some sort of fever. I called in Dr. Morton & Franklin, and he is much improving to-day, but is stiff in his limbs & can't stand up, but is cheerful to-day & can roll over. Ninie has not left the room for near a week. Old Dr. Morton says it is the result of a severe cold, but is not dangerous. He broke out with a heat all over as red as scarlet & stiffness set in as the redness left him. He is now eating some. All the rest are well, one & all.

I see that the Yellow Bayou suit or motion to set the sale aside had not come up when you wrote. Capt., if you get your money from Ohio, I wish you would redeem the 40 acres, the Gum

767 cut, and that 40 next below having the two log houses on it, the latter being in the woods, and the 40 including the new building in which Lewis Banks lives, & the 40 that covers Lewis' old house. The 1st 40 is in 14 & 2 in 11 sections. The one at Gum cut in 10 sec'ns; &, if you can see your way clear, 40 in 13, to include the improvements of *of* parish, & also Henry Turner's 40, & forty in the woods lower down. I can refund, say, $1,000, to you readily soon. By all means redeem the two 40's at Gum cut, as — is the entering wedge to the Richmond place. If I get the Walker place you are a creditor & can redeem, so Rose says, & no one else. This do as far as you can go & I will refund. Whether the sale is set aside or not, it is all-important to have Gum cut & other choice spots with a house on them. I have labored hard to build them, and if I I am to loose Yellow Bayou I will, as certainly as I have as much means on earth left, raise funds to put up Bellevue levy if I am to still to — on the half of it. That will be my settled determination; and as soon as Mr. Fox returns from his southern New York summer tower, which will be in a few days, let me hear from the motion so soon as possible.

768 I saw Jenny, & she says most positively she never said in her life that she lent you a cent of money in her life, but expressed gratitude for your faithful attentions to her Daisy & her other one, now gone; so it is a lie grub-ed up by poor Willis. He is doubtless making difficulties between you & Moll as the summer is on the poor boy. Only turn a deaf *y*ear to him and if he is sick look after him. I will place all matters right if I should live. My water is pressing on me more than usual this hot weather, & there is no certainty of our short lives. I am extremely sorry my children or most of them seem to be disposed to have jars with you. I feel very little like quarrelling with one standing at the helm of affairs in a hot climate that I cannot stand myself and who is willing to do all he can for me. I have trouble here & elsewhere, but am hearty with all. Let me hear from you soon.

W. H. TODD.

EXHIBIT 6.

PHILA., 24*th Oct.*, 1875.

DEAR CAPT.: It has been some time since I have written to
769 you or heard from you. In Ninie's last you seemed unpleasant toward me, & I have remained silent, as I could do no better, & that far short of what you wished. Now, to begin, Ninie is quite well and Ben. has set out on foot two weeks ago, & is travelling at the rate of about a mile a day; only stops to eat & sleep at short intervals, and goes it again after refreshments are over. You may look out at Bellevue Landing for him in a few weeks. Depending somewhat on a remittance, as he says, he can only travel on funds, and none on hand here. He could walk from the landing home if he could get there. He has grown fine & fat, after having 4 teeth, & now stop-ed. You never saw a finer boy in all your life. I have nearly finished the mill, but, like all enterprizes, it is going to cost more than I anticipated, but I have the floor all laid, the roof

on, & all the sash & glass on the ground & paid for; will commence the plastering next week. The wheel will be done in 2 or 3 weeks & the mill in running order. I have altered, at the expense of $100, Oxford's Front-St. house that was renting for $24; have rented it now for $35 per month; am now altering, at
$220 expense, the Front-St. house below Coats, mak-
770 ing three houses out of one, putting a new roof on, &
which rented before at $30 now aiming at $50 per month. Such times—the children's property, as all have here to get rent, or, if vacant, to get a house rented—we have not seen since 1845. All together I am very busy every day; to-morrow, the 25th, I leave a-9 o'clock for Wilkesbarre to try over again the coal land suit that will take $125 to my children's share of contributions to fee lawyers, besides expenses at court. Try drew on me at sight for $100, which I had to pay yesterday. Reynolds' doings to pay expenses of suit creditor's bill I suppose the result of the suit at Luzerne; I will communicate to you. Brannin & Co. have sued for $2,461 in Ky.—Owen Co. lands—and also Woolfork for his note, the mortgage note on Bel'vue, & is to come off on 1st day of Nov., & I will try & get off from Wilkesbarre & fly out there to be present at court the 2nd day of the term. I have no defence against Brannin, but have against Woolfork, & will fight him at that point instead of Ark.

So Bel'vue will soon be relieved of the incumbrance of which you
speak. As the mill is not quite done, I will have to return
771 here & try get it finished & rented before leaving for Ark.,
unless something occurs now not foreseen by me. I take it for granted that all I will get from the South will be fully swallowed up in paying the debt of Brannin & others and I fear I am unable to do anything with the levy. I have arranged with Jury & Gillis to ship my Yellow Bayou crop to them & they have given me their acceptance for $1,250, & I have drawn that sum on the house & got it cashed here. Richardson & May wrote me that they had declined at that stage of the season to loan you 2,000 to make the levy, but they asked me if further on in the season if they should — the advance what security could we give. I replied to them, if they would at an early day give you the funds on the crop of 1876 *1876* that each of us would ship them our crop of 1876 entire & that I would give him a mortgage on the entire 6,000 acres of Yellow Bayou place, but notified them that $3,000 was on 800 acres of the improved land of Y. B., so I could do no more. As I have rec'd no reply from that house & closed with Jury & Gillis I am unable
to say anything further. I will try & visit Ky. & write from
772 there to you, & will come all alone down there if anything
can be furthered by so doing. My health is quite good, tho' lately threatened with a return of my old complaint, but I think it now passed. So you — how I am striving and compassed about with much dif-iculty. Among other things, Kirk wants to come home, but would be willing to stay till spring, but not to stay another year. Would you advise me to retain him until Ap'l or May & then get another man, or to let him come now & get another at once at $50

per month for the year? Now, let me hear soon. I will have returned here in the meantime.

Your friend, WM. H. TODD.

P. S.—I am requested by Ninie to say she has not received a line from you for over two weeks & she feels uneasy about your silence. All the family join in love to you & the boy likewise; Daisy, *two*.

EXHIBIT 7.

PHILA., *July 6th*, 1875.

DEAR CAPT.: I received yours of the 27th June in verry quick time, and Ninie rec'd of you one a day or so before. We
773 were pleased to have your favor, and the more so as it left you in good health, a verry acceptable portion of information in a warm climate. I feel pleased with your estimate of the probable yield per hand on Bayou place, & also that you will have my gin-saws sharpened. The suit of Scott have been looking out for for several terms of the court; do the best you can for me in the case. T. H. & J. M. Allen have notified me that Cohen has transferred the -50,000 mortgage to them to secure them in advances made to Cohen, the receipt of which I have not yet acknowledged. Bussey sent me the bill of 5 bales, $53 a bale, -262 for the whole. No bill from Jury & Gillis, tho'. I had given them a Nov. note for $300, & add for the balance struck against me. I have asked the favor of Bussey to accept $1,400 in favor of Allen of Memphis, & I would be glad you would drop him a line on that subject, payable 1st Dec'r, as you have dealings & acquaintance with him. I remit herewith to your order $500 to help pay my -30,000 bank-mortgage instalment, & fifty more to pay your expenses to Little Rock. Having written 3 letters, one or two long since, to Gallagher & Newton, and receiving no reply, telegraphed twice, which answers I herewith enclose, and neither letters or telegrams brings me the *the*
774 letters promised, & I am in the dark as to whether the time is further extended from 1st July or not; be that as it may, my order to my counsel was to pay in June early, & to tell me the further amount in cash, to buy scrip to meet my first instalment. I bargained with Garland to give $200 as counsel fee in each case of Yellow Bayou & Bel'vue. I had no connexion with any other case in the county. I made the agreement with Garland at the Chicot circuit court. I fear those men have used my $500 and find it difficult to raise it to meet the scrip purchase; you will please go at once to Rock without delay & pay each instalment yourself now due, & give attention to the future payments yourself; it will cost far less than — have coun*cil* to attend to it after the matter has been finally settled by a decree. Do not fail to go at once and give it your individual attention. You will find the attorney gen'l always willing to receive, and perhaps a perfect gentleman. If more is needed try & get a draft cashed on me so as to be paid on or a few days after the 1st Aug. If it should be $200 draw at 10 days' sight, or if difficult to do so, then at sight, but telegraph me, that I may have notice.

775 Mr. Fox, of Norristown, having a claim on my mill estate of 100 acres of land for a few thousand dollars, has agreed to advance me a few thousand to rebuild the burnt mill, but will only do so by installments and only for that purpose, and I am now busy going on with that job, and the weather is again extremely warm & it is awful hard for me to stir around to get lumber, limestone, glass, & see to the work as it is progressing. The use of the instalments will help me some to get along with my matters; money is terrible tight, and rents lowering every day. I had to make 4 houses out of 2 to get them rented, & it cost $100. Some of the children's houses are empty; the Ninie's is now occupied at a lower rent. When you get to any point going — or at the Rock telegraph me by night line that I — know your efficient hand is in it. If for expenses you need more draw at sight for the same. If you stop at Helena go on the rails to Clarendon, in Monroe Co., & then take a stage & strike the Rock & Memphis line to the Rock near White river, & when at Clarendon see to the state of the taxes in Monroe, which you will find on the map of Pellon's landing in your possession. Your
776 son is well & all the family here, & he is the finest fellow that ever rolled, laughed, kicked, & jumped. Daisy is well and hearty, & all things are going on in their old way at our house that would not sell.

Write soon. W. H. TODD.

EXHIBIT 8.

PHIL'A, *Sept. 27th*, 1874.

DEAR CAPT.: I rec'd your — touching court matters. Reynolds was employed as counsel in the Carlton case and should have sent me an affidavit of defence & I could have filled it up and he could then have asked for a continuance—he knew it was necessary & where I lived—and he is censurable for not attending to my business. I could not have come to Arkansas if I had intended, owing to illness, & on that ground a continuance ought to have been asked for; but I suppose no one cared a jot if I were ruined. You paid Carlton $100 for me, & I paid him $100 in a draft, & I was to give him $50 to defend Gains or Gum Cut, & I paid $30 & Cohen paid $20; & did he, Carlton, not give me any credit for that $250 paid? He was to have
777 only $50 by agreement for Gum Cut suit. But it is only to sue me & get all they ask & more. It is peopled by a dam-mean set of blood-suckers. Kirk, if nothing happens, will leave here the 4th of Oct., next Monday, and come right away. Please see that he fully displaces & roots out Learners from all authority on Yellow Bayou. Take the $100 on a draft & use it and come on here & recruit your health, & accompany your — home, & come to my house. You have one of the finest babies I ever saw, & the best one. She was under the necessity to get a wet nurse at $6 per week, & that is cheap; the way things are going on here, it costs me more than $20 per week for market money alone; and if I ever get over my illness I shall have to remain till the coal land suit comes off in Nov., if at all this fall, & I shall not be able to travel in a long time, & the women will need some one to accompany them.

I find my interest on mor-gages in Phila. & adjoining counties is about $2,000, my rents $3,000, taxes 7 or $800; so if I get all South paid out, you see, my income from the South will be my only clear gains. I find I will have to let Dick &
778 Den go to Ky. & try & make a living by farming or starve. I think I will have about $4,000 to be — of my sales here to help pay out my Southern debts. A man of any substance going South will have the juice pressed out of him if he goes down to Jericho or Lake Village lawyers. I am glad the fence is up as far as Batts. Tell me if Dolly ever got home, &, if not, charge $125 for her against Seamons. If Leonard has the black horse take him away from him at once, & try & see — the mules are fed & kept alive until Kirk comes. You speak of contract hands not working. Why, who is it among the contractors that have failed—or have they all failed? Tell me specifically all they are doing or have done, &c.

I am done with shipping to the Allens, or to any one, to pay debts. I will try & do otherwise. I think I will try Bussey, in New Orleans. What do you think? Keep me posted of all things as they take place. Try & get these papers from I. M. Craig—I need them—& do not offend him. We are all tolerable well, & am glad you have got rid of your chills & hope you will keep them off. Come on,
779 if you can, for a little recreation, especially as I am in no fix to travel.

Yours truly, WM. H. TODD.

EXHIBIT 9.

PHILA., 12*th Oct.*, 1874.

DEAR CAPT.: I received your letter of the 3rd inst.—did not come to hand till to-day. As I have but part of 2 days to telegraph or to write, it is not worth while to do so at all. If the mules are to be sold it must be so. I closed the sale of the lots by making the deeds to-day of property I sold by bound in August last, and would have remitted to you money the latter part of this week to pay Semms, as I had written to you long since, but in settling ground hire they take such a long time to make out searches, at best, and twice as long if one is sick. I will remit to your order at the earliest day. If the sale did no- go on you can pay the debt. If it did go on you can hold the draft subject to my order, and if they sell my stock I will go on to Saint Louis & ship others immediately on being so.
780 informed by yourself and Mr. Kirk, who will hand you this letter. He takes passage at 11 to-night. Ninie will leave on or about the 1st Nov. if funds come to help her off, or, if you write me, I can furnish her the funds to get off with here and you can help me down South. Just suit yourself in your next. Ninie did not get any letter when mine was handed in to me to-day.

It seems impossible for me to keep with those Southern men after Samms waited so long. It seems hard that in 20 days more the cotton could have been ginned & shipped. What is the state of the rivers in the Ohio and Missi. at St. Louis I am totally uninformed, and if mules or anything else are to be shipped is there water enough? I do not intend to be beat if I can help it. I will search every paper

I have & if there is a bill of lading or any other paper relating to business South will send it or bring it South, and I will go to New Orleans & search the books of Allen to find what cotton Carlton has had of mine. If I cannot ride on horseback I hope I can travel on rail or steamer, if needs be. In regard to Leonard- trip & Thurman & C. White, do as you please in dismissing them.
781 Try & make the place pay. Mr. Kirk will do for me & under your direction anything reasonable, & he will push things if he has a chance. Your boy is one of the finest boys ever born unto the world; will soon coo & is laughing, & Daisy is doing finely, & all are in health & *fact*, except Deringer. He is & has been very sick dangerously. Write soon & tell me all.

Your friend, W. H. TODD.

EXHIBIT 10.

PHILA., *Sept. 2nd*, 1874.

DEAR CAPT.: As court is coming on I send you $100; you may need it if Williams comes to court, or if you can get a time draft *of* on Williams try & do it & use this in paying for the fence, or if you can do no better promise to hand over to Lewis Banks a bale of cotton, the first ginning, to pay the hands for work on the fence. Use your best means to have the fence made up, & try & save, & until it is done pay some one to guard the field & drive of- stock.
I am very feeble, but doing tolerable well. I have made
782 another sale & the papers are being made out, so tell Mr. Semmes what lacks of the cotton I hope to be able to remit; but conveyances are slow. I have sent to Bussey $100 to send meal, pork, oats, salt, &c., this day & to your care. See my mules and people get it. Not able to write more.

Nina will write.

Yours truly, WM. H. TODD.

EXHIBIT 11.

PHILA., *Oct. 15th*, 1874.

DEAR CAPT.: I herewith send my dep. and Deringer also. The above is all the dealings I ever had with Mr. Walker. The weather is cold & dry. I accepted the $720 draft on the 14th, which makes it fall due the 17th Dec'r, a dev-lish hard case, all attributable to the neglect of Reynolds not sending me an affidavit of defence. If the mules have been sold let me know, & I will go & furnish more, but not so many at a time, and to do it I would go to St. Louis; and tell me if there is water enough to ship from there. If money is needed to reimburse the mule expenditure a 5-days' draft can be
783 met. I will remit, at all events, to you, as I can use up a bank in Ark.

I hope to get my money on Saturday or Monday next. I will change Rich'd & Deringer to Mill Creek instead of Ky., as I can keep my eyes on them there better, & go into the sheep busyness in Ky. with Garnett. I intend to try to build up the mill and make it a flouring mill, & it will not be so apt to burn down, & have fewer

dirty *opperation*-, & was calls to deal with Gowan, the principal counsel in the coal-land suit, for Coxe get- home from Europe on the 10th Nov., and as the Deringer heirs are refusing to come forward with their funds to carry on the suit, &c., I have made up my mind to compromise on equal shares rather than run the further risk, and I feel it my *my* duty to remain here until I have the suit tried or set for trial or compromised, and then I will set out for Ark's; but if mules are to be purchased I go as soon as Ninie starts, about the 1st, for home in Ark's. I am feeble, but getting dev-lish & busy-
nesslike. Tell me how much, at $50 per bale, I can rely on from
cotton. Cotton is very low at 15½ & 16 cts. in New York.
784 If Simmons does not once fix the price get Brawner or any
one else that will do it. A bill of $62, due Carver for the fixtures used on Bel'vue gin, is pressed for pay't by letter. Your son must weigh 25 lbs., *pounds;* white —, black eyes, & very self-willed, and all your heart could wish, & and I hope you will have good luck with your dear son. All is well. Deringer has recovered & is here now for the first time. Kirk will be with you, & I hope he will be all right under your management. You will take full management of Yellow Bayou & with you to let the- all know it, & Kirk will move under your auspices & direction. Write, soon & tell me everything.

Your friend, WM. H. TODD.

I observe Arkansas 6 in New York—15 cts. is bid; no sale. It will likely take 20 cts. to buy them. What is State scrip worth? Tell me in your next letter.

EXHIBIT 12.

PHILA., 11*th Sept.*, '74.

785 DEAR CAPTAIN: Your son is doing finely indeed. Ninie had to get a wet nurse, her milk having failed from the beginning.

Ninie is looking well & is quite hearty & lively; as the case is, you scarcely ever here the dear boy cry, as the nurse's milk is fresh & good & she seems attentive to her duty. Poor little Daisy said she had a pretty little girl-baby in the next room & they call him Benny, & she said she was going to take him, *her*. She runs up & down stairs all day long for one thing & then another. The baby is large & stout & while being dressed cries with life; a very great favorite. I hope he may be a comfort to you both. My health is feeble often; getting better of my general disease; on the lower part of my spine a carbuncle set in & I have been in bed for near two weeks with that & it is not much better; it is, however, a long lane that has no turn. Kirk is now thinking of get-ing off on the 25th, to reach Ark. by the 1st Oct. Old Tom Wright has sent in his no-
tice that he wants the $3,000 remain-g on his allowance, due
786 15th Dec., '74. So I have always enough to do. I had a
thought to send lumber from New Orleans to finish the yard fence & the cotton-seed house, but you have made some arrangements down South & therefore I will wait your reply, as it will be

some days before the title papers are got ready — the sale money rec'd.

Get Simmons off the place the earliest day possible. I allways knew he had only 20 acres cultivated by a single crane, & from what Brawnere said & Charles Sanders, who stop-ed there hunt-, it must be one *the of* God-forsaken places in the howling wilderness. Be that as it may, let him slide from our place as best you may. Let him have some bales of cotton to pay him, after he settles for the mare or other stock lost; pay for feeding his mare & colt. I never told him to bring a horse there; I had plenty; & I paid his taxes on Gum Ridge land, & the books will show other things he got, & Kirk can tell something of his receipts. As to suits for damages, let them try it; all right.

787 Verry truly, W. H. TODD.

P. S.—Can't you come on a few weeks & see & accompany your wife & son to their Southern home.

EXHIBIT 13.

PHILA., 25*th Oct.*, 1874.

DEAR CAPT.: Your letter of the 15th inst. came to hand a few days since. If, now, Cohen chooses to proceed to enjoin in my hands funds due Seamens I will do all I can to help him get his dues. I have no papers with me to fix up. I bought for Seamens & shipped 65 or 70 dollars of goods from Phila., and he got goods from the boat, & they are charged on the books, & other supplies. I shall charge him $125 for Dolly, which he took or suffered to be taken from the place. I paid his taxes, near $50; Reynolds knows the exact amount. In addition to our settlement for the — 1873 I was to allow him $60 per month for his services on my place, he to find himself in everything and occupy a portion of the
788 house. I fed a mare and colt for him, & I suppose he ought to allow for their feed, as I never asked him to bring any horse on the place to ride. I had enough of my own for him to ride while on my busyness, but I never authorized him or his wife to ride my stock to Gum Ridge or any remote place, nor did I ever tell him to leave the place or neglect my busyness to attend to Gum Ridge farm or to attend on church worship for any length of time on B-you Bartholomew or anywhere else. For all time he spent of-the place I refused to pay for. I never did, directly or indirectly, tell *he*, Seamons, to take a bale of cotton out of the gin after I left and sell it on his own account, but 9 were to go to Mr. Simms, 1 to my servant woman, & the other to Mr. McMurray, by special arrangement. If he sold one bale on his account it was without authority from me. I have fully answered, so far as Seamons is concerned. Mr. Kirk knows of the bill of goods sent him & of the articles got for his account on the boat & of a sack of oats furnished him to feed his drowning stock on the Mason. The press
789 have fixed and charge it to Seamons, if not now done. If you think proper, accept service for me to aid Mr. Cohen to collect his debt of Seamons. Judge Woodard left a few days

ago for Europe. Before leaving, however, he sent for me, &, among other things, said Gowan (who is now in Europe, but will return about the 10th Nov.), that he, Gowan, would not agree to a special term of the *Lezcar* court to try the residue of the coal-land track until after the decision of the Supreme Court in the case already tried & now pending, and will be argued in March next. I will remain here until after Gowan returns, & if he refuses still to the special term before the decision in the upper court & I cannot compromise the case, which I am inclined to do if deemed advisable, then I will come South with Ninie & her beautiful boy, nurse, &c.; but as I have changed my mind from sending Dick & Der. to Ky. & intend sending them to Mill Creek, it is necessary for me to stop at my farm in Owen Co., Ky., & arrange with Garrett, the tenant,
790 for future operation, & they—Ninie & the baby—will have to journey alone for the balance of the trip. I purpose to try & build up the mill in the spring & run it as a grist-mill, if possible, & hence the stock needed to farm it with can be used in hauling the lumber to build the mill with. The roads all around the mill & the neighborhood are much improved and the road down the creek is vastly improved, running in its new location above my spring-house, & in the opperation 1,000 perch of stone has been quarried & thrown out. I calculate the opening an avenue from Brynmahr to the city park 100 feet wide, & the vast improvements at Brynmahr, at the headwaters of Mill Creek, will add 100 per cent. to the value of the Mill creek, 100 acres of land. The continued improvements are rapidly going on, & that also, together with the extension of the park & its improvements, all adds to the benefit of our place. The road tax in lower Marion will, I fear, be near $300 this year. Rents in the city are daily gowing down, & cotton also appears low, & money tightens as cold weather nears.

If the elections in Pa. & New York go democratick the
791 levies in the South will be built, and, as the ball has commenced, a change will help the South soon in our Congress. I have not drawn a dollar on my crop; intend to try pay debts with what is made South.

4TH Nov., '74.

I rec'd yours of 25 Oct. I never employed J. Seamons by the year; I only employed him by the month at $60, he to find himself in everything; I made no written contract with him; Jimmy was the only person present when he proposed to take the $60 and said he could line the plantation with hands—not less than 80; 15 he was to bring from Bayou Bartholomew; he never brought one from any place. I will come down with Ninie or soon after; we will start one day next week; look out for us. I send you a power of att'y, duly executed, fearing a disappointment may occur that I do not get off so soon as expected. Starting the two boys at Mill Creek & Evalyn also & the other liabilities runs me short of money, and very unexpectedly so, but the children would have starved if I had not done something for them; they will for the winter escape house
792 rent & firewood & prepare for a crop in *in* the spring; I have furnished them with a team & waggon, &c. Charge $125 for

Dolly & $65 for goods delivered & for book account, & I will help Cohen to collect his debt. All are well; nothing new.

Respects to Mr. Kirk. I may add, come along.

Truly your friend, W. H. TODD.

EXHIBIT 14.

Know all men by these presents that I, Wm. H. Todd, of Phila., hereby appoint Capt. B. H. Smith my attorney-in-fact, for me and in my name to take possession of Yellow Bayou plantation, house, & all and every parcel of furniture, all stock, & everything of value on said plantation; have the cotton picked, ginned, shipped, & sold, and appropriate the proceeds to the satisfaction of my liabilities; to remove from said plantation Joshua Seamons & all or any persons that he may deem advisable, and demand all the books of account kept by said Seamons for the plantation, & receipt for the same; if said Seamons refuses to remove from said place or to deliver the books or papers, take legal steps to remove him or force sufficient to remove him from said plantation, & to settle all claims he may have against me for wages, charging the said Seamons for all pay'ts made to him & for all property allowed to be removed from said place, &, finally, to do all and further acts and things in judgment for my interest & to further the ends of justice, hereby ratifying all acts done by my said attorney as fully as if I were present at the doing thereof, this 4th day of Nov., 1874.

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WM. H. TODD. [SEAL.]

STATE OF PENNSYLVANIA, }
City & Co. of Philadelphia, } *ss:*

On this fourth day of November, A. D. 1874, before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing at Philadelphia, personally appeared William H. Todd, who acknowledged that he executed the foregoing letter of attorney for the purposes therein mentioned and desired the same to be recorded as such.

Witness my hand and official seal the day & year aforesaid.

[SEAL.] GEO. W. THURSTON,
Notary Public.

EXHIBIT 15.

She has improved in talking very much. Dick's child is also smart. Willie has improved during the winter & spring; but the most decided improvement is in Eva, at Clark's, in every way. She is still there at $5 per week, & I have thought it best to allow her to remain during vacation. Building is going on about us as fast as usual, but few houses selling, and I have long looked forward to a crash in the building business, but still it goes on, and in this city it will do so until the centennial of 1876; vast amounts of funds will be expended in fixing for the exhibition, which will surpass all preceding ones on the face of the earth. If a small amount of money is needed draw for it to have your engine or other

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ago for Europe. Before leaving, however, he sent for me, &, among other things, said Gowan (who is now in Europe, but will return about the 10th Nov.), that he, Gowan, would not agree to a special term of the *Lezcar* court to try the residue of the coal-land track until after the decision of the Supreme Court in the case already tried & now pending, and will be argued in March next. I will remain here until after Gowan returns, & if he refuses still to the special term before the decision in the upper court & I cannot compromise the case, which I am inclined to do if deemed advisable, then I will come South with Ninie & her beautiful boy, nurse, &c.; but as I have changed my mind from sending Dick & Der. to Ky. & intend sending them to Mill Creek, it is necessary for me to stop at my farm in Owen Co., Ky., & arrange with Garrett, the tenant,
790 for future operation, & they—Ninie & the baby—will have to journey alone for the balance of the trip. I purpose to try & build up the mill in the spring & run it as a grist-mill, if possible, & hence the stock needed to farm it with can be used in hauling the lumber to build the mill with. The roads all around the mill & the neighborhood are much improved and the road down the creek is vastly improved, running in its new location above my spring-house, & in the opperation 1,000 perch of stone has been quarried & thrown out. I calculate the opening an avenue from Brynmahr to the city park 100 feet wide, & the vast improvements at Brynmahr, at the headwaters of Mill Creek, will add 100 per cent. to the value of the Mill creek, 100 acres of land. The continued improvements are rapidly going on, & that also, together with the extension of the park & its improvements, all adds to the benefit of our place. The road tax in lower Marion will, I fear, be near $300 this year. Rents in the city are daily gowing down, & cotton also appears low, & money tightens as cold weather nears.

If the elections in Pa. & New York go democratick the
791 levies in the South will be built, and, as the ball has commenced, a change will help the South soon in our Congress. I have not drawn a dollar on my crop; intend to try pay debts with what is made South.

4TH NOV., '74.

I rec'd yours of 25 Oct. I never employed J. Seamons by the year; I only employed him by the month at $60, he to find himself in everything; I made no written contract with him; Jimmy was the only person present when he proposed to take the $60 and said he could line the plantation with hands—not less than 80; 15 he was to bring from Bayou Bartholomew; he never brought one from any place. I will come down with Ninie or soon after; we will start one day next week; look out for us. I send you a power of att'y, duly executed, fearing a disappointment may occur that I do not get off so soon as expected. Starting the two boys at Mill Creek & Evalyn also & the other liabilities runs me short of money, and very unexpectedly so, but the children would have starved if I had not done something for them; they will for the winter escape house
792 rent & firewood & prepare for a crop in *in* the spring; I have furnished them with a team & waggon, &c. Charge $125 for

Dolly & $65 for goods delivered & for book account, & I will help Cohen to collect his debt. All are well; nothing new.

Respects to Mr. Kirk. I may add, come along.

Truly your friend, W. H. TODD.

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things done or debt settled. The two houses I got are renting for -25 each, & clear of incumbrance. Now, on receipt of this sit down and make a rough estimate of what you would imagine the crop on each place to be in bales. I have seldom found you far wrong in your calculation. Ride over Yellow Bayou & give me your views of things as you — them, & make general remarks of matters, & tell Mr. Simmons to do the same, tho' I will drop him a line of
795 this date. I do not think of writing anything further now. I wrote to Mr. Cohen and got answer, & I do not know what to say to him. I have heard nothing from Buckner & my cotton or liabilities.

Your friend, W. H. TODD.

Draw for anything due me from Allen & Co., New Orleans, or anything else due from any one.

16th July, 1873.

W. H. TODD.

EXHIBIT 16.

PHILA., *July 16th*, 1873.

DEAR CAPT.: Your letter of the 10th came to hand to-day. In answer I remitted the $3,000 and the busyness was finally closed on the 14th, & I to-day remitted $700 to T. H. Allen & Co., as that amount was what you drew for. I also made the request of Mr. Allen to allow my ac't to go over, as he promised, as I passed through Memphis on my way East, from which purpose he may have to some extent *have* swerved or changed his mind on the bold acts of old Wright, but I presume he will have confidence somewhat reinstated. I made the request of him to write you to that
796 effect. The 1st bill of sale was for 10 bales, 568, the second, 98, making $666. Now, if he will allow you for me to draw for that it will help me to pay Carlton or Street. Each of those claims are to be ascertained from the allowance of record, not from notes, 10 per cent., in their possession. Mr. Graves will tell you the remaining amount in each case. I paid Street $1,000 cash & Carlton 2,000 cash & shipped him twice to Allen. Now, if Reynolds is paid Anthony's cotton can be used in paying any liability best for my interest; you judge of it to suit yourself.

You cannot sell unimproved lots for cash at all, generally, but I got a part cash, say, 3,700, 1,632 to pay Smith's judgment & have left 1,700 only with which I have to pay matters here in part. I got a mortgage of 12,000 & 8,000 in two 8-roomed houses & the residue was 6,833 encumbrance, $500 more to pay off something, making in all $34,900 sales—*what of* the lot left after selling the church lot, 13,250, & 3 other 18-feet lots, $3,600, last year. I may sell another, and if I do will pay Wright all I can. I have no idea cotton will sell for more than 14 cents next
797 season, if even that, but of course it is impossible to tell. I shall take your suggestion on every point you allude to. No doubt the freedmen have been look-out for squalls & neglected their busyness, their mouths open, and sorry they are disappointed in

getting the cows & mules & many others. Tell Mr. Simmons to go ahead with the gin with all speed and to listen to no gossip, and hurry up the hands to their respective duties and I will try & do my part to meet his payments. Money is very scarce, & I had to sell to the city treasurer to get some funds. Two others failed to meet their engagements & that put me in the dilemma I have been in. Now, Cap., so soon as you can get the cotton ginned, come on to my house in Phila. & stay awhile & recruit your health, for I know you are about broken down or jaded both mentally & bodily. We will give you a hearty welcome to our city of brotherly love. I have never seen the time when Ninie & all the family won't be so glad to see you. Daisy is off on a pick-nick, & every
798 inch of her well and sweet as a nut, & devours your letters as they come forward.

WM. H. TODD.

EXHIBIT 17.

PHILA., *June 2nd*, 1873.

DEAR CAPT.: In Ninie's letter I received the weight of Ned Smith's cotton, & that of Cyrus Brown & Parish was to be given next. The further news from the place I have not heard a word. The letter of Reynolds, claiming 160 dollars, the residue of his allowance, was rec'd; this amount will, of course, have to be paid. The claim of Adams must wait for the payment of Street's allowance, made by the court at 6 per cent. instead of 10. The face of the note given by me to Craig or Street will shew the amount with 6 per ct. added. I wish you would try & arrange so as to have the note or draft of $278, given by me to Tappan & Hornor for the taxes in Phillips, paid; it was drawn on Buckner & Co.; there was on it still $42 more, but I will remit the residue from here. Write me if the river is at such a stage as to land lumber on the bank for the gin, and if Simmons is there yet,
799 and such other information of my place and your own as I need know. Tappan & Horner wrote me Buckner refused to pay the $278. I suppose I have sold my lot fronting on 18th & Gratze & Montgomery Sts. for $35,000, but it is not definitely settled. A large proportion of the purchase-money will be taken in houses & mortgages, & the day it is finally settled will write to Reynolds & Wright, of Memphis. A sale will be made of all or a part soon to meet the demands South, even if no more. The church on my lot is being roofed & a stately edifice it is, & they will begin worship in 20 days in the basement. Building is tolerably brisk & the weather is favorable now for all bus*y*ness. Money much easier in our city than when I arrived here. I am pressed; interest falling due, but just near through the spring dues. How are my folks working in the crop? I think I wrote you to get lumber through Mr. Cohen. So, if he undertakes it, all well. If he does not, let me know the time it is needed & I will telegraph to St. Louis or New Orleans, but will not do so until you write me the time the
800 timbers will likely be done. If on examination you find the cal*f*s belonging to cows lent to the darkeys are not used well turn

them loose with their mothers in the woods, or tell Mr. Simmons to see to it, as in your judgment would be best. I overlooked the forwarding the record in the Walker case to the court of appeals at the Rock. See to it for me, if you please. I have expected for 10 days a sale, & with the funds to close up some money matters, which I hope will be soon done & remittances made. Ninie I have home & Jenny also. Will soon fix up the front room for your reception, so you will find a welcome to my house so long as you please to sojourn in our city. So come straightway to 31st and Market, & then for 9 cts. get an exchange ticket for 19th St., Columbia avenue, & you will meet with friends & your Ninie in fine spirits, and every inch of Daisy anxious to see papa, the sweet little one of all. She loves Ninie & you all the time. Come so soon as you can, and in the meantime tell me all of the South that occurs worthy of attention. We are all well & I hope like blessings attend you & all the place.

Yours very truly, W. H. TODD.

801 I have seen my friend in lower Marion; the matter is yet afar off, if ever reached, rather thinking it is indefinitely passing away.

EXHIBIT 18.

Memo. for Capt. Smith.

Of the allowance of $10,000, made at the Sept. court, 1872, I have paid Gen'l Pike 1,000 in full; the 500, as part of the 1,000, was due Julia Johnson. I paid 200 to J. F. Robertson & ship-ed him, Johnson & Goodrich, 4 bales of cottons. When the returns of sales come in, if any due, it will be but little. The part coming to Reynolds, $750, 250 cash paid, & 7 bales of cotton ship-ed to him; & when the returns of them come in, if any due, it will appear. Britchard & Bickham.

The part due Col. Carlton I have paid him, 2,000 cash, & shipped to T. H. & J. M. Allen 18 bales & 4 bales & 11 now to ship at Linwood. Street's portion, $1,000, paid in cash; will have to ship some cotton to meet the residue of the pay'ts. Taxes in Philips; drew a draft in favor of Tappan & Horner for 278 doll's on Buckner & Co., N. O., & pay't refused.

802 Cohen will attend to it; 26 bales shipped to Buckner & Co., with Cohen to pay for mules; drew two drafts, $442, $142; drew $175 to go to Memphis with, 100 cash he gave me; the residue was to pay for feed, but little of which I have got, & I drew $75 to pay the Irishman for work, & he paid him the $68, the residue he did not give me. The residue of my cotton, after selling all of Cohen's advances for taxes & travelling & Philips' Co. $278 & paying all his bill but $200, after deducting the errors & exhorbitant charges, the whole of Cohen's bill I find I cannot pay at this crop. I will have to ship to Buckner to meet my dues to Street & others, unless I will make a different arrangement with Mr. Allen as I go through Memphis. The nails and lumber for the gin will have to arrange with Cohen, if Buckner refuses to buy it for me. 8,000 feet

of inch boards, any lengths, 100 joice, 14 feet long & 2 by 8 inches, seems to be all I have to furnish to repair the gin. The Stubb mill now in the brick gin move over to my gin & fix those splendid
803 stones for the Bel'vue place on the stand now used for the Stoubb mill at the brick mill-house. I will, from time to time, write to you, & you to me. Pay $40 to Anny for hire, 160 cts. to Ellen McFale, $5 — Adam White for hauling cotton to gin. There may be something to pay for the record in the Walker case to go to the supreme court. Charles White, due $10. I have not paid Lee, the blacksmith, one cent yet. Will have to pay him through Cohen, I suppose; do not know his bill; owe Ben. Miles $1 & John Miles 75 cts.; I owe Ben. Patterson 3 for Pitt, 3 for boots, & some before; do not recollect all yet.

W. H. TODD.

EXHIBIT 19.

PHILA., 22 *Oct.*, 1871.

DEAR CAPT.: I rec'd yours of the 11th yesterday; am very sorry of Mr. Harrigan's sickness. We are all well here. Now, as I wrote a few days ago fully on the subject of your visit to Memphis & probably to Phila., and the next day Scott'- letter came notifying me that 1st Nov. was the earliest day for disinterment of remains of the dead, which have to be sent on the carrs at Schoolfield
804 & Co., in Memphis, on the 1st Nov., you will find a telegram notifying you that if you ship Mrs. Todd's remains to me here and telegraph me to that effect that I will be in readiness to receive the box & to bring your wife & Jenny on to Ark., provided I negotiate sales, of which there is some probability, and if the sales are made & I can leave Phila., then & in that event your trip here can be dispensed with; but if you got no telegraph at the place indicated you may take it for granted that I cannot leave here, & you had best come & take your family & Harrigan with you. Nothing would please me more than to have you visit us, but with Harrigan's illness I feel how important your presence is on both sides of the bayou. Neither Ninie or Jenny are willing to leave without seeing their poor mother's remains interred in Laurel Hill. The matter of which Mr. Pike speaks appear satisfactory & all matters of the cotton busyness. If you go to Memphis I think you had best get there the grates for the engine, but notify me whether you do or not that I may attend to it if you do not. I did wish in my trip to
805 stop in Owen Co., Ky., and also at Pittsburgh, and if I come alone to go by way of St. Louis, but all depends on the matters of sales here above alluded to. I must arrange for those liens here on 18th & Gratz & pay Brannin some money, regulate taxes, &c., and have some little left for emergency elsewhere. All join in respects to you & Charlie. The baby is doing finely.

Yours very resp'tfully, W. H. TODD.

Scott is at Mahoney-, back of engine-house No. 4, on Main St., below Monroe St.; does not speak of going further North.

EXHIBIT 20.

PHILA., *June 3rd*, 1870.

MY DEAR CAPT.: I rec'd a letter from Mr. Scott, who informs me of the safe arrival of the corn & of its security after delivery. How are the crops getting along, one thing taken with another? We got home safely and my affairs were in quite as good situation as I expected. On way up all things with Brannin, &c., was right. When at Oct. court in the village, on sett-ing with that viper,
806 Carlton, after giving drafts for his fees, — the note that I gave to Joshua Craig, & he transferred the same to J. S. Whittaker, of N. Orleans, as the acting representative of H. F. Walworth's estate, and the 560 acres of land on Yellow Bayou tract (some of which in the dead-ning near Gum Landing) was all mortgaged to Miss Minie Martin, now McMurray. The note was sued on, but no judgment, because I entered to enjoin it in ch'y, so Craig managed, with McMurry, to get it satisfied of record during court, and I had to do something with it or a judgment must have gone against me, so I tried to settle it by a draft on 1st Nov., but Carlton would take nothing but a draft, 1st Sept., and, rather than submit to a judgment in connection with full settlement, I gave it, with a full understanding that it was not to be presented for acceptance, but that I would pay it out of the 1st cotton shipped; but, to my utter astonishment, it was presented to the house of B. & S., and they accepted the same for 4,800 doll's when they had had me protested for
807 $71 in full ship-ing time last winter, & I told Brannin, in Ky., as I passed, not to *or* accept any one of my drafts unless funds were in hand or my written notice. Still this had been done. Brannin was dissatisfied & charged me as if paid & will not furnish anything further of supplies, so do not order anything without notifying me.—*B. H. S.* So I immediately wrote to Whitaker, the holder of the note or draft, of the understanding at the time of its execution, & submitted to him this proposition: That if he would cancel the acceptance I would, under the direction of J. M. Craig, Carlton, or any one they choose to select, ship to B. & S. house the 1st cotton of all; have any that belongs to my share on either place in the name of the holder of the draft to satisfy the same, so if any one make a visit on that errand you will understand their view; nor would I feel the least astonishment if Carlton would, on Kelly's or some other unpaid demand, attach my mules in my absence & give me trouble. If I fail with Whitaker in the *the* cancelling the acceptance I will sell here, if I can, & pay it. Brannin said Ned Smith's money would arrive at
808 Luna about the time I was at Louisville; if so, when, if ever, I receive the 150 dollars, go over to our Bayou place & see if we need mule medicine or anything else; &, if so, send for it at Memphis & have it on hand, for fear we may need it or something else on one or both places, & keep the fund for occasion of plantation needs, & sum up our probable wants for each place between this & picking time & let me know, for provision must be made outside of Brannin if this acceptance cannot be arranged. I have

no fault to find with B. on this subject, & have so wrote him. Money is verry abundant in the country, but I am not in funds. I told Ed. Urseman to remit all due to 1st June in a New York draft; it will serve you to come away on some time about the 1st July. Tell Ninie to come direct to my house, as I know her funds will be low, for I have drained you to the bottom dregs; not make any stop in the route at all; and when you yourself leave come direct to my house & stop with us & save expense, or if both come
809 together come direct to us; such as we have give we to thee.

The auditor, in the Louisville suit of Woolfolk & myself, reports Woolfolk's debt $75,000, mine at $48,000, & if I have to pay $25,000 in suit in the supreme court of Ark., Wright & Halladay's, my claim will be $74,000, & Selonid Peak, -10,000; so all may get 50 cts. to the dollar. Pike claims that Kelly's claim shall be paid in full before any other claim gets any pay't, & that point will be argued at Ky. to-morrow, & Pike, in his answer or letter to-day, directs me to appeal if the case goes against me. On that point, to that end, I have written to Lindsey to enter the appeal for me. Ma's health was quite fine on her arrival, but she got a very bad cold, but is improving. Den came home and poor, dear Eva, & spent 10 days each, & have gone back; both seem much improved. Poor Evalyn seems poorly in health & worse in prospects. I pity her from the depths of — soul. God grant her deliverance at an early day from the delusion that hangs her to the man she loves. Ma would fill up
810 a little, but is now engaged. Try & do all on earth to make a crop, as we shall need much to settle things right. Pike thinks that Carlton's answer in the creditor's bill case the greatest outrage he ever saw a man commit as a respectable lawyers; that is the case when I call him in question in reference to the Walker case wherein he was employed to foreclose, & then bought tax title & turned against his first client, Craig's adm'r. Ma — Ninie will write you to-morrow or soon. My arm is better, not had it examined, but will soon. Write when Ninie will come, &, if so, will you come with her; & tell her when she starts to telegraph us that we meet her. We have a fine horse; & all well & send respects to you both.

Yours pa, WM. H. TODD.

Respects to Mr. Scott; help him to think & act.

811 EXHIBIT 27.

Know all men by these presents that I, Wm. H. Todd, of Pa., appoint Capt. Benj. H. Smith my att'y-in-fact to bid in, at a sale of Yellow Bayou, the entire estate in lands that were mortgaged to me by Leland P. & M. Craig, dec'd, in the year 1856, and also bid at a sale of the Belview estate for three undivided fourths parts of said estate, but not for the shares of one-fourth part *as* which Woolfork & wife have a- héir under the will, L. P. Craig, dec'd; and also bid for the adjoining and surrounding lands of the Yellow Bayou tract, and also to bid for any portion of lands of the M. Craig estate

lying in the counties of Philips, Monroe, and Drew, in the State of Arkansas; as witness my hand this 17th day of Feb., 1868.

WM. H. TODD. [SEAL.]

Witness:
J. Y. Y. SMITH.

812 EXHIBIT 22.

PHILA., 17*th Feb.*, 1868.

MY DEAR SON: Your welcome favor of the 4th instant came safe to me this morning. This is the first letter which I have written to you since I left Memphis. At that point, at Somerville, I met with constant disappointment in raising funds to run Yellow Bayou, and the 12th I telegraphed Thos. H. Allen & Co. to ship the 100 sacks of corn, which he did by the Quitman. I forwarded him $500, and to-day I will order him to ship 200 sacks of white corn and 50 sacks of oats & 20 bushels of potatoes, to plant; so much of the- as you plant, plant the potatoes; and also to ship 5 lbs. of pork more, a b'l of hams, & flour, coffee; and as you seem to think it uncertain how many hands can be had to contract, and that a short No. will join us, owing to various circumstances of a discouraging kind, you seem to despond. It is just what I looked out for, yet I feel hope-
813 full yet to plant for 500 bales of cotten & 10,000 bushels of corn. Do not despair; the darkest hour is before the break of day, and the stick, altho' crooked, I have seen such sticks before and straightened them out, & I will do likewise now, even in Christ, if my health continue to enable me to see you again. I will also write to Ms. Allen & Co. to give you credit to the amount of $1,000 to buy mules therewith, if you can see you need them, with reliable hands. After I left you at Greenville, if I had the cash, I could have made a fine thing in the purchase of mules that were coming aboard, reships to Ky., but I did not make such a move. I am still of opinion that Vicksburgh or down the river is the best place to buy. Keep on the lookout for acclimated mules, & if, from the experiment made on Hack's mules, you think the pack of Robertson's will do, you might take a few—say 10, ten, more—of his on time. If you
814 give cash for any, let them be fat & large, ready for immediate use. I regret Mr. Langley does not seem to suit you; Ninie with all her furniture is at home & will remain here; the weather during the time Rich'd was get-ing her things in was desperate cold, and I did intend ship-ing some South & will try & do so in a few days—such as are portable; Ninie's health was miserable when she got in the city, but she had just come out of a succes-ful law suit with Miller & Co., & is now much better & in fine spirits; as to friends, coloured or white, I care but little after; have done justice to all. I was very sick when I reached Phil'a, and ma was very poorly, indeed, more so than I have ever seen her in my life, and some two weeks ago she was attacked with a violent pleurisa on the lungs or what is in the South called pneumoria, with which she is laboring and suffering intensely, and, altho' some
815 little better, still in doubtfull situation; Mr. Deringer is not expected to live very long, as he — sinking or failing daily; he

seems much attached to me; I visit him daily almost. Unless a change for the better in ma's health and papa's, I cannot leave home for some time to come, and I therefore fear much more may devolve on you than otherwise would if I could be with you to aid and advise.

I agreed with Woolfork to bid $30,000 for Yellow Bayou, and at the rate of $35,000 for Belview—that is, he is to take the 4th at the 4th part of 35,000, and I the residue at ¾th parts of $35,000. The surrounding land adjoining Yellow Bayou bid a low figure, but run it up to 3 or 4 dollars an acre, and for the residue on or adjoining the little lake that Chapman will separate from the residue of the Yellow Bayou tract, altho' adjoin-g, make those who bid for it pay
2.50 per acre, and then drop it on them unless you see they
816 want it bad; then run it up a little higher.

The 8,000 acres con-ected tract, part in Philips & part in Monroe counties, bid it at 30 cts. per acre first, and if it is run up on you go to 2.50 per acre; on the Monticello tract, $200, commencing at 10 cts. per acre. The other tracts disconnected, 3 to 4,000 acres, bid 20 to 50 cts. per acre. See the Chicot press and keep a copy of the memorandum or advertisement of all the lands advertised to be sold, commencing at Lake village on the 16th March, 1868, as nar-ated in Chapman's letter of 4th Feb., '68. I will try & be with you at or before the sale, but, for fear of dif-iculty or death or any unforeseen occurrence, I write the power and instructions alone. I write Chapman of even date herewith. Add to or increase at discretion.

WM. H. TODD.

817 P. S. Why doesn't Capt. Porter write me what he is doing — the coal yard and your other business affairs. Perhaps the letters will not reach you; so, perhaps, I can answer as well as you. The money he receives from the yard, he might as well send the money on to me. I can put the money in bank at Kensington. Let me know in your next.

Your wife, NINA SMITH.

EXHIBIT 23.

PHILA., *July 7th*, 1873.

DEAR CAPT.: It was not until the 2nd instant that I made the sale of lots 320 feet by 177 ft. and 10 in., at $6.50 per foot, to Peter A. B. Widner, city treasurer, now elect, renominated for 2nd term without opposition, and when your note reached me of the levy on Y. Bayou
Widner was at Atlantic City. I went down immediately on
818 Saturday, & he is to arrange 4,000 for me to-day, & I will telegraph Allen & remit at the same time; but it will not reach in time to stop the sale of the personalty, but hope it will the land; but be that as it may, the land is redeemed in 12 months, at 15 per c't. in'st; the sale is for a fraction less than $35,000, about 10,000 cash, so soon as the title is complete by searches, and it will be all available, the residue taken in houses & mor-gages. Tell Semmons to go ahead, & all the material will be on hand in

due time, & if the mules and things are sold make a bill of those needed & send me the same, & it will all be sent down from St. Louis by boat, and the purchase made by telegraph at once. We must try & get the levy on Bel'vue down also. I will try & go ahead, notwithstanding all that now appears. I will write to Little Rock, as you indicate, & let you hear from me soon. All are all
819 well, & no frolicking. Daisy is always crazy to get your letters; so, soon as the storm is over, come to Phila. and take a rest. We shall receive you gladly & your Minie affectionately.

Hope you are over your fatigue, and a thousand times obliged for the interest you have manifested in my affairs.

Your friend, W. H. TODD.

P. S.—Richard is trying to get a situation in the post office & with apparent success; Den. is panting & steady.

EXHIBIT 24.

PHILADELPHIA, *July 25th*, 1873.

DEAR CAPT.: Yours of the 16th to Minie Carrel—to hand yesterday; in it you say Dave Trip & Nelson have near completed the hauling your lumber and that the Yellow Bayou hands refuse *or do* haul the 13,500 feet due Yellow Bayou. You please call
820 and see Henry Turner and ask him if he will do the hauling with my teams, and if he declines doing it get Nelson & Dave Trip to do it with my teams, and if they do it let the teams be moved to your lots; fe-d them if you think best for it and pay them so much a day for hauling; give them cash down in greenbacks. I will — Ninie have the cash here or remit the amount in cash as you please or think best; do not let the lumber lay a day on the bank, it might cave in. The cotton of Anthony, do the best you can with my interest. I got a late letter from Allen & he reaffirms that my ac't may go over & I will write to New Orleans to know the amount there to my credit, it was 660 dollars; but as to Anthony's cotton *cotton*, ship it to suit your views. The $1,700 was paid — 3,700 in Allen's hands; that — 2,000 after paying
821 1,700. In some way wish to raise 4,000 to pay Wright, besides the crop; tell me in your next the probable coming prospects, one thing taken with another. Young Kirk will in all probability come down with me in the fall. Talk with Mr. Simmons and urge him to go on with the gin with all reasonable speed. We shall look for you in a few weeks on to our home; hope you have not got sick from the heat of the sun; write often before you leave; tell me all you know of Yellow Bayou, & tell Simmons also to write about cows — mules & curry them all well and go ahead.

Yours very truly, W. H. TODD.

Dick is home; Keefny & Den at a distance; Daisy is all well and often talks of Uncle Capt.

822 EXHIBIT 25.

PHILA., 17*th June*, 1873.

DEAR CAPT.: Your letter stating the purposes of Reynolds just rec'd; at the same time Tappun and Honner draft, as protested, was rec'd. Just as you said, Cohen has overdrawn on Buckner; under the circumstances, let them have no more cotton on my account. Try and let old Anthony haul in and gin his cotton as soon as possible. I have not drawn on Allen for one dollar since I have been here. I have this day wrote to T. H. Allen, of Memphis, to pay Tappan & Honor draft of $278. After that is done, whatever is in Allen's hands you are hereby authorized to draw for in my name in favor of Reynolds, or for any other you think for my interest, and to transfer any other cotton I may have to the use of my liabilities.

823 I would prefer it ship-ed to and sold by Allen for use of any one you designate. On Friday next lots will be sold, and as soon thereafter as the examinations can be made, the searches completed, the money due Reynolds will be remitted in draft to your order, and if the stock in the mean time *be* shall have been sold you can furnish other stock to carry on the crop or make a further payment to Wright. I had every trig-er set and the most profound & seeming sure sale of $35,000 worth of a large lot, made in order to meet the Wright claim, far beyond the agreed amount due the 15th instant; could have sold the smaller portions, but the man of large capital did not want the square lot cut up. But now I will sell, & have agreed to close on Friday the smaller portions, which, when done, I will remit, as before stated. Try and manage

824 the forth-ing bond and let the crop go on & the repairs to the gin. I have requested Mr. Allen to write you as to letting his debt go over. Your wife & Daisey & all of us are well. Do not feel in danger; I am all right, and will come out right side up.

Yours truly, W. H. TODD.

If any further cotton, ship to Allen & Co. for me, or to use of creditor, as you please.

EXHIBIT 26.

MEMPHIS, *June* 26, 1873.

Benj. H. Smith, Esq., Luna, Ark.

D'R SIR: We have yours of the 20th now; indorse dispatch of yesterday from Mr. Todd. We have a letter from Mr. Todd, dated 17th, asking us to pay Tappan & Horner $278 for taxes. We have written to them to draw on us for the am't, & by direction will charge the am't to his ac. with J. H. & C. M. Allen & Co., N. O., to

825 whom he says you will ship cotton. The net of his ac. we hold over here. We send him a little bill to-day. If Mr. T. wants any funds here for you we will advise you at once.

Yours truly, THOS. H. ALLEN & CO.

EXHIBIT 27.

MEMPHIS, *July 4th*, 1873.

B. J. Smith, Esq., Luna, Ark.

D'R SIR: We have just received yours of the 1st. Hope you will ship the 16 b. c. as soon as convenient. We enclose a dispatch from Mr. Todd addressed to you & ourselves authorizing us to draw at 10 d's for any am't. You can, therefore, draw directly on Mr. Todd, instead of drawing on us for the $1,500 you need. Exchange is in good demand & sight is at par.

Yours truly, THOS. H. ALLEN & CO.

826 EXHIBIT 28.

MEMPHIS, *July 7th*, 1873.

B. H. Smith, Esq., Luna, Ark.

D'R SIR: Since writing this morning Mr. Todd dispatches us he has mailed $3,000 & wishes us to draw for $1,000 at 10 d's; instruct us what you want done with the money. If your d'fts are out they ought to be taken up here as the funds is coming, except $1,000.

Yours truly, THOS. H. ALLEN & CO.

EXHIBIT 29.

MEMPHIS, *July 10th*, 1872.

B. H. Smith, Esq., Luna, Ark.

D'R SIR: Mr. Todd's letter has just been received, inclosing
827 checks on N. Y. to the am't of $3,000. We would send them to you, as Mr. Todd says you will need the money by the 14th, but as you may have drawn on us for part the am't we deem it best to let the d'fts be collected, so that we will have the money to pay your d'fts when they come. The checks are drawn on a Phila. bank on N. Y. bank and will no doubt be paid. You had better see Gen'l Reynolds at once. We will try and have the d'fts collected by the time your d'ft reaches Memphis, so as to protest.

Yours truly, THOS. H. ALLEN & CO.

EXHIBIT 30.

NEW ORLEANS, *April* 14, 1874.

B. H. Smith, Esq., Luna Landing, Ark.

828 D'R SIR: We have your fav. 4 inst., and in reply have to say that the ac. sales for the cotton referred to have been sent to Mr. C. H. Carlton, to whom you can apply for them.

Very truly yours, T. H. & J. M. ALLEN & CO.,
Per D. W. RANDOLPH.

EXHIBIT 31.

MEMPHIS, *July* 23, 1873.

Capt. B. H. Smith, Luna, Ark.

D'R SIR: We duly received y'r favors of the 9th & 17th. We paid your d'ft on W. H. Todd for $1,700, and yesterday we paid to J. T.

Wright your d'ft in favor of Gen'l Reynolds for $1,000. We did not draw on Mr. Todd, but told him to remit what he wanted you to have. He sent us a check for $700, which makes $3,700
829 in all, which you can draw for, altho' we have paid a tax d'ft for $280, or about that, but if you ship the cotton that Mr. Todd said you had on hand to our house at N. O., we will transfer the am't of d'ft to N. O. This is what Mr. Todd wanted done.

Yours truly, THO. H. ALLEN & CO.

EXHIBIT 32.

MEMPHIS, *July 7th*, 1873.

B. H. Smith, Esq., Luna, Ark.

D'R SIR: We wrote you last week; inclosed a dispatch from Mr. Todd authorizing you to draw on him at 10 d's for any am't you need. We at the same time replied to your letter. We now inclose you a letter from Mr. Todd giving more fully his wishes,
830 which you will understand.

Yours truly, THOS. H. ALLEN & CO.

EXHIBIT 33.

The Western Union Telegraph Company.

Thos. T. Eckert, general manager; Norvin Green, president.

Night message.

Send the following message, subject to the terms printed on the back hereof, which are hereby agreed to:

PHILA., PA., 3, 1873.

Rec'd at Memphis, 4th.

To T. H. Allen & B. H. Smith:

Sale made for plantation use; draw at ten days' sight any amount.

WM. H. TODD.

12, paid; ½ rate.

☞Read the notice and agreement on the back of this blank.☜

EXHIBIT 34.

From Thos. H. Allen & Co.

PHILA., *July 3rd*, 1873.

DEAR SIR: I telegraphed you to-day, which will reach you to-morrow, that I had sold property, and if any farming uten-
831 sil/s or mules or anything else were wanting to draw on me for any amount needed. Wright, the pl'ff in the execution in Chicot, took the step — sell me out to break me up, as I supposed — to name the day in July when he said he needed the funds. I had made the sale early in June, & the papers were to have been made out, but an unfortunate incident defeated the pay't, and I had to

get another man, & it was all signed yesterday and the purchaser is our city treasurer, and the funds will be paid over so soon as the searches are made, which will take 10 or 12 days; so if Capt. Smith needs funds to buy mules at Memphis in place of any sold, or anything else, draw at 10 days' sight, or, if needs be, at 5 days, & I will meet it promptly. The sale was large, but not all cash;
832 sufficient to settle this matter of Wright's & his son-in-law. They may try, but will find it difficult to break me down. Any aid you give Capt. Smith to keep the crop growing will be duly appreciated by your friend—

W. H. TODD,
Or CAPT. SMITH.

P. S.—If Mr. Cohen shall not get mules at Memphis & will telegraph me I will send to St. Louis & have as many sent down as are needed at once. Send this letter — Capt. Smith, as it will go quicker than if sent direct from here.

Sale for $35,000, more than half trade; don't tell Wright or any one the amount.

833 EXHIBIT 35.

Received in apparent good order from B. H. Smith on board the steamer Mary Bell, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Jurey & Gillis, the dangers of navigation, fire, explosion, and collision excepted, as per margin and this memoranda, freight at card rates, or 1.00 per bale, and charges $84.00.

Dated Jan'y 29, 1876.

Marks.	Articles.	Whose ac.
W. H. T.	10 b. c.	W. H. Todd.

GRESSON.

EXHIBIT 36.

Received, Bellevue, Jan'y 29, 1872, from B. H. Smith, in apparent good order, on board steamer Richmond, bound for —, to be delivered in like good order, without unavoidable delay, the dangers of
834 navigation, fire, explosion, and collision excepted, at New Orleans, on wharf-boat or landing, twenty feet from water's edge, where carrier's responsibility shall cease, unto Ben. Kuer & Co. or assigns, he or they paying freight at card rates, or $1.50 per bale, and charges $100, with — per cent. exchange on advances, payable on demand. Marks and articles as per margin; in case of lightering or reshipping freight carried to the point of reshipment to be collected as charges. Master, clerk, or agent has signed B. L.

Marks.		Charges.	Ac.
W. H. T.	20, twenty, bales cotton.	$1.00.	W. H. Todd.

J. T. McCORD, *Clk.*

EXHIBIT 37.

Received in apparent good order from B. H. Smith on board the steamer Mary Bell, whereof Frank Hicks is master, to be de-
835 livered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Jury & Gillis (the dangers of navigation, fire, explosion, and collis-on excepted), as per margin and this memoranda, freight at card rates, or 1.00 per bale, and charges —.

Dated at Bellevue, Dec. 18, 1875.

Marks.	Articles.	Whose account.
W. H. T.	10 b. c.	W. H. Todd.
		GRESS'N.

EXHIBIT 38.

Received in apparent good order from B. H. Smith on board the steamer Bell Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Johnson & Goodrect (dangers of navigation, fire, explosion, and collision and this memoranda *accepted*), freight at card rates, or — per bale, and charges —.

Dated at Belleview, Mar. 23, 1873.

836 Marks.	Articles.	Whose account.
W. H. T.—P.	4 b. c. Wet.	J. F. Robinson.
		SUMW.

EXHIBIT 39.

Received in apparent good order from E. J. Hawkins on board the steamer Bell Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, — E. H. Summers & Co. (dangers of navigation, fire, explosion, and collision and this memoranda excepted), freight at card rates, or 12 — per bale, and charges —.

Marks.	Articles.	Whose account.
W. H. T.	11 b. c.	W. H. Todd.
		SPEARY, *Clk.*

EXHIBIT 40.

Received in apparent good order from B. H. Smith on board the steamer Mary Bell, whereof Frank Hicks is master, to be
837 delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Jurey & Gillis (the dangers of navigation, fire explosion, and collis-on excepted), as per margin and this memoranda, freight at card rates, or 1.00 per bale, and charges —.

Dated at Belv'ew, Jan. 1st, 1876.

Marks.	Articles.	Whose account.
W. H. T.	7 bales wet cotton.	W. H. Todd.
		GRESSONE.
		T.

EXHIBIT 41.

No. 8547.

Copy.

Sales by T. H. and J. M. Allen & Co. of 18 bales cotton for account of W. H. Todd, Esq., credit C. H. Carton.

Sold to J. B. Lafitte & Co., M'ch 31.

Marks:					
	451	429	431		
	435	405	440		
W. H. T.	477	459	430		
	427	432	442		
	407	351	389		
	389	385	442	7,621, 16	1,219 36

Charges:

Freight, $27			27 00
Brokerage on sale, ¼ pr. cent.			3 05
Charges advanced.			
R. R. or riv. ins., $90 pr. bale.			
$1,620 @, ⅝ p. c.		10 12	
Fire ins. on sale, ⅗ per cent.		7 31	
			17 43
Dr'ge, st'ge, weighing, & labor, at 60 cts. pr. bale			10 80
Commission on sale, 2½ per cent.			30 48
			88 76
Net proceeds, present currency			$1,130 60

E. E. New Orleans, April 22d, 1873.

T. H. AND J. M. ALLEN & CO.,
Pr. SMITH.

838

EXHIBIT 42.

Received in apparent good order from Isaac Cohen on board the steamer Bell Lee, whereof Hicks is master, to be delivered without delay, unless unavoidably prevented on the levee, at New Orleans, unto assignees as below (dangers of navigation, fire, explosion, and collision excepted), as per margin and this memoranda, freight at $1.50 per bale, and charges —.

Marks.	Articles.	Consignee.	Whose account.
B. H. S.	Thirteen (13) b. c. Wet & muddy. 3 bales co'n eaten, wet.	T. H. and J. M. Allen & Co.	C. H. Carlton from Wm. Todd.
W. H. T.	Three (3).	T. H. and J. M. Allen & Co.	C. H. Carlton from Wm. H. Todd.

SUMW.

EXHIBIT —.

No. 8547.

Sales by T. H. and J. M. Allen & Co. 18 bales cotton for account of W. H. Todd, Esq., credit C. H. Carlton.

Sold to J. M. Lafitte & Co., M'ch 31.

Marks:					
	451	429	431		
	435	405	440		
W. H. T.	477	459	430		
	427	432	442		
	407	351	389		
	389	385	442	7,621, 16	1,219 36

Charges:		
Freight, $27		27 00
Brokerage on sale, ¼ per cent.		3 05
R. R. or riv. ins., $90 p. —.		
Bale, $1,620 @ ⅝ %	10 12	
Fire insurance on sale, ⅜ per cent.	7 31	
		17 43
Dr'ge, st'ge, weigh'g, & labor, at 60 cts. pr. bale		10 80
Commission on sale, 2½ per cent.		30 48
		88 76
Net proceeds in present currency		$1,130 60

E. E. New Orleans, Apr'l 22d, 1873.

T. H. AND J. M. ALLEN & CO.,
Per SMITH.

839 EXHIBIT 44.

Bussey & Co., cotton factors, 188 Gravier St.

NEW ORLEANS, 31 *March*, 1875.

W. H. Todd, Esq.

DEAR SIR: We wait on you with sales of one bales of cotton; net proceeds, $51.3, to your credit. Referring to price current for quotations, we are—

Truly yours, BUSSEY & CO.

EXHIBIT 45.

Shipped in good order and condition by Benj. H. Smith on board the steamboat Bell Lee, whereof Hicks is master, now lying at the port of Bellevue and bound for New Orleans, the following articles, marked and numbered as below, which are to be delivered in like good order and condition at the aforesaid port (the dangers of fire and navigation excepted) unto Bussey & Co., he or they pay-
840 ing freight for the said 12 — per bale and charges $50.00.

In witness whereof the agent, master, or clerks of the said boat hath affirmed to bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Bellevue, Ark., Feb'y 20, 1875.

Marks.	Articles.	Consignees.	For account of.
T. & S.	Fourteen (14) b. c.	Bussey & Co.	Benj. H. Smith.
W. H. T.	Wisse, 9.	Bussey & Co.	Wm. H. Todd.
			J. N. S. M.

Charges, 50.00.
" 6.45.

[Folios 841 to 846 not in MSS.—Cl.]

EXHIBIT 46.

Regular New Orleans & Vicksburgh Tuesday packet.

Shipped in good order and condition by Isaac Cohen on board the steamboat R. E. Lee, whereof John W. Cannon is master, bound for New Orleans, being marked and — below, and are to be delivered without delay, in like order and condition, at the port of New Orleans (the dangers of fire and navigation only excepted) unto Buckner & Co., or assigns, he or they paying freight for said
847 cotton one dollar & fifty cents per bale, and charges —.

In witness whereof the master or clerk of said steamboat hath affirmed to 2 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Lenwood this 4 of May, 1873.

Marks.	Articles.	
W. H. T.	11 (eleven)	bales cotton.
J. B. [C].	3 (three)	do.
M. G. [C].	2 (two)	do.
S. & M. [C].	1 (one)	do.
S. B. [C].	1 (one)	do.
W. H. T.	7 (seven)	do.
	25	

J. H. MONAH, *Clk.*

I. COHN:

If this bill lading is not wright or if the cotton go to some other house send telegraph dispatch to Vicksburg to be sent to me and I will pay.

Y'r— J. H. MONAH.

EXHIBIT 47.

Received in apparent good order from Isaac Cohen, on
848 board the steamer Illinois, whereof Capt. Cheek is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, La., unto Bussey & Co. (the dangers of navigation, fire, explosion, collision excepted), as per margin and this memoranda, freight at 12 — per bale, and charges $—.

Dated Upper Luna, Ark., May 29, 1875.

Marks.	Articles.	Consignee.	Whose account.
W. H. T.	Four (4) b. c.	Bussey & Co.	Wm. H. Todd.
B. & Co.			
W. H. T.	One (1) "	"	" "

Privilege storing & reship-ing.

J. EMERSON.

EXHIBIT 48.

Received in apparent good order from Isaac Cohen on board the steamer Illinois, whereof Capt. Cheek is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Jurey & Gillins (the danger of navigation, fire,
849 explosion, and collision excepted), as per margin and this memoranda, freight at 12 — per bale, and charges $31.00.

Dated at Upper Luna, Ark., May 29, 1875.

Marks.	Articles.	Consignee.	Whose acc't.
W. H. T. / J. & G.	Seven (7) b. c.	Jurey & Gillis.	Wm. H. Todd.

Charges, 31.00.

Privilege storing & reship-ing.

J. EMERSON, *Cl'k.*

EXHIBIT 49.

Shipped in good order and condition by B. H. Smith on board the steamboat Frank Pargood, whereof J. M. White is master, now lying at the port of Luna and bound for New Orleans, the following articles, marked and numbered as below, which are to be delivered in like good order and condition at the aforesaid port (the dangers of fire and navigation excepted) unto Mess. Bussey & Co., he or they paying freight for the said — and charges —.

In witness whereof the agent, master, or clerk of the said
850 boat have affirmed the bills of lad*en*, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Luna, March 28th, 1875.

Marks.	Articles.	Consignees.	For ac't of.
[W. H. T.]	Fifteen (15) b. c.	Bussey & Co.	Wm. H. Todd.
[W. H. T.]	Two (2) b. c.	Bussey & Co.	James Clou.
	17	C. H. Cuy.	

EXHIBIT 50.

Received in apparent good order from B. H. Smith on board the steamer Belle Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Buckin & Co. (dangers of navigation, fire, explosion, and collission and this memoranda excepted), freight at card rates, or 12 — per bale, and charges $3.50.

Marks.	Articles.	Whose account.
W. H. T.^{7}; W. H. T.^{2}	(9) b. c. Sunway.	W. H. Todd.

Charges, 3.50.

J. EMERSON, *Cl'k.*

851 EXHIBIT 51.

Received in apparent good order from E. J. Hawkins *or* board the steamer Belle Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Bucklin & Co. (dangers of navigation, fire, explosion, and collission and this memoranda excepted), freight at card rates, or 12 — per bale, and charges $—.

Dated at Lenwood, M'ch 9th, 1873.

Marks.	Whose account.
W. H. T., 3	W. H. Todd.
T. & S., C, 8	Todd & Smith.
B. H. S., 3	B. H. Smith.
M. C. C., 4	Mary Crockett.

SPEARY, *Clk.*

EXHIBIT 52.

Received in apparent good order from B. H. Smith on board the steamer Mary Bell, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at
852 New Orleans, unto Jurey and Gillis (the dangers of navigation, fire, explosion, and collision excepted), as per margin and this memoranda), freight at card rates, or $1.00 per bale, and charges $150.00.

Dated at ——, Nov. 20th, 1875.

Marks.	Articles.	Whose account.
W. H. T.	10 b. c.	W. H. Todd.

GRESSON.

EXHIBIT 53.

Received in apparent good order from W. H. Smith on board the steamer Belle Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto T. H. and J. M. Allen (dangers of navigation, fire, explosion, and collision and this memoranda *accepted*), freight at card rates, or 12 — per bale, and charges —.

Dated at Belleview, Feb'y 23, 1873.

Marks.	Articles.	Whose account.
W. H. Todd. Marks ex'd.	18 b. c.	W. H. Todd.

SUM'Y.

853 EXHIBIT 54.

Received in apparent good order from B. H. Smith on board the steamer Mary Bell, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Jurey & Gillis (the dangers of navigation, fire, ex-

plosion, and collision excepted), as per margin and this memoranda, freight at card rates, or $1 per bale, and charges $250.00.

Dated at ——, Jan'y 16th, 1876.

Marks.	Articles.	Whose account.
W. H. T.	13 wet b. c.	W. H. Todd.

GRESSON.

EXHIBIT 55.

Received in apparent good order from B. H. Smith on board the steamer Mary Bell, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Jury & Gillis (the dangers of navigation, fire, explosion, and collision excepted), as per margin and this
854 memoranda, freight at card rates, or $1.00 per bale, and charges ——.

Dated at ——, Dec. 14, 1875.

Marks.	Articles.	Whose account
W. H. T.	10 b. c.	W. H. Todd

GRESSON.

EXHIBIT 56.

Received in apparent good order from B. H. Smith on board the steamer Belle Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Buckner & Co. (dangers of navigation, fire, explosion, and collision and this memoranda excepted), freight at card rates, or $1.50 per bale, and charges —.

Dated at Belleview, Feb'y 25, 1872.

Marks.	Articles.	Whose account.
W. H. T.	8 b. c.	W. H. Todd.

SULLIVAN.

EXHIBIT 57.

Received in apparent good order from B. H. Smith on board the steamer Tidal Wave, whereof W. B. Richardson is master, to
855 be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Semmers & Brannins (dangers of navigation, fire, explosion, and collision excepted), as per margin and this memoranda, freight at $2.00 per bale, *per bale* and charges $—.

Dated Belv'ew L'd'g, Oct. 13th, 1871.

Marks.	Articles.	Consignee.	Whose account.
W. H. T.	4 b. c.	S. & B.	W. H. Todd.
I. B. T.	2 "	"	"

Privilege reship-ing.

KENTHAN, *Cl'k.*

EXHIBIT 58.

Received in apparent good order from B. H. Smith on board the steamer Belle Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto E. H. Simmons & Co. (dangers of navigation, fire, explosion, and collision and this memoranda excepted), freight at card rates, or — per bale, and charges $3.09.

Dated at Bellv'ew, Feb'y 23, 1873.

Marks.	Articles.	Whose account.
W. H. T.	3 b. c.	W. H. Todd.

Marks ex.

SULLIVAN.

856 EXHIBIT 59.

LAW OFFICE OF D. H. REYNOLDS,
LAKE VILLAGE, ARK., *Dec. 27th*, 1876.

Rec'd of Benj. H. Smith the draft of H. W. Graves in his favor for $210.00 on Mess. Bussey & Co., & his own draft in my favor on Buckner & Co. for $244.77, & making in all $454.77, & same when paid to be in full payment of judgment in favor of J. M. Murray & Co. against W. H. Todd, rendered at July term, 1876, except cost in said cases, which are to be arranged by him.

D. H. REYNOLDS,
Att'y for J. M. Murrey & Co.

$1,000. EXHIBIT 60.

Rece'd of Benjamin H. Smith his draft on T. H. Allen & Co., in my favor, for one thousand dollars, to be credited on the execution against Wm. H. Todd in favor of E. J. Wright, & if draft of Isaac Cohen, protested, is paid this am't to be returned to said Smith.

D. H. REYNOLDS.

857 EXHIBIT 61.

$2,000. LAW OFFICE OF D. H. REYNOLDS,
LAKE VILLAGE, ARK., *July 2d*, 1873.

Rec'd of Benj. H. Smith the sight draft of Isaac Cohen in favor of B. H. Smith & drawn on Mess. Buckner & Co., of New Orleans, for one thousand dollars, & endorsed by said Smith, & also draft of John Bulman in favor of Isaac Cohen, & by Cohen endorsed to said Smith & by Smith endorsed to me, & drawn on Mess. Buckner & Co., of New Orleans, for $1,000; in all two thousand dollars. When above drafts are paid the amount is to be credited on a decree in favor of Emma J. Wright & to be paid by one Wm. H. Todd out of the assets in his hands belonging to the estate of James W. Craig.

D. H. REYNOLDS,
Att'y for Plaintiff in Cause.

858 EXHIBIT 62.

LAW OFFICE OF D. H. REYNOLDS,
LAKE VILLAGE, ARK., *July 3rd*, 1872.

Rec'd of Benj. H. Smith five hundred dollars, being in payment of two drafts of C. W. Fry, as received, &c., on Wm. H. Todd for $250 each, one in favor of himself and on- in favor of D. H. Reynolds, the drafts being left with D. H. Reynolds to be used by him as vouchers in favor of Wm. Todd in his report as master in chancery case No. 82, Chicot circuit court.

D. H. REYNOLDS.
C. W. FRY.

EXHIBIT 63.

Rec'd of Wm. H. Todd, Esq., seven bales of cotton shipped to Pritchard & Bickham, of New Orleans, on which are $50 *dollars* charges, the net proceeds to be a credit on allowance of $750 in my favor in suit No. 82, chanc-ry, in Chicot circuit court, Sept. 7, 1872.

Mar. 24, 1873.

D. A. REYNOLDS.

859 EXHIBIT 64.

Shipped in good order and condition by B. H. Smith on board the steamboat Bell Lee, whereof Hicks is master, now lying at the port of Bellevue L'd'g and bound for New Orleans, the following articles, marked & numbered as below, which are to be delivered in like good order and condition at the aforesaid port (the dangers of fire and navigation excepted) unto Bussey & Co., he or they paying freight for the said — 12 — per bale; and in witness whereof the agent, master, or clerk of the said boat has affirmed bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Bellevue L'd'g, Ark., Feb'y 6th, 1875.

Marks.	Articles.	Consignees.	For whose account.
W. H. T. 14	Fourteen (14) b. c.	Bussey & C-.	D. H. Reynolds. GRESS'N.

860 EXHIBIT 65.

Shipped in good — and condition by Isaac Cohen on board the steamb-at Illinois, whereof Check is master, now lying at the port of Bellevue and bound for Vicksburg, the following articles, marked and numbered as below, which are to be delivered in like good order & condition at the aforesaid port (the dangers of fire and navigation excepted) unto Richardson & May, New Orleans, he or they paying freight for the said — and charges —.

In witness whereof the agent, master, or clerk of the said boat

hath affirmed to bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Bellevue, Ark., Sept. 11, 1875.

Marks.	Articles.	Consignees.	For account of.
W. H. T.	Four (4) b. c.	Richardson & Son.	D. H. Reynolds, By Wm. H. Todd.

Privilege storing & reship-ing.

McDONALD, *Clk.*

861 EXHIBIT 66.

Received in apparent good order from B. H. Smith on board the steamer Bell Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Jurey & Gillis (dangers of navigation, fire, explosion, and collision and this memoranda excepted), freight at card rates, or 1.50 per bale, and charges $—.

Dated at Bellevue, Dec. 20th, 1873.

Marks.	Articles.	Whose account.
T.	7 b. c.	D. H. Reynolds.

SPEARS, *Clk.*

EXHIBIT 67.

Shipped in good order and condition by B. H. Smith on board the steambo-t Bell Lee, whereof Hicks is master, now lying at the port of Bellevue, and bound for N. O., the following articles, marked and numbered as below, which are to be delivered in like good order and condition at the aforesaid port (the dangers of fire and navigation excepted), unto Bussey & Co., he or they paying freight
862 & 3 for the said — and charges —.

In witness whereof the agent or clerk of the said boat hath affirmed to bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Bellevue, Ark., March 6th, 1875.

Marks.	Articles.	Consignees.	For acc't of.	Charges.
T. & S.	Seven (7) b. c.	Bussey & Co.	Benj. H. Smith.	50.00.
W. H. T.	Ten (10) b. c.	"	D. H. Reynolds.	

Not ac. for damage.

GRESSON.

EXHIBIT 68.

Received in apparent good order from J. Cohen on board the steamer Bell Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Prickard & Buckham (the dangers of *of* navigation,

fire, explosion, and collision excepted, as per margin and this memoranda), freight at card rates, or 12 — per bale, and charges —.

Dated at Bellevue, Feb'y 28, 1874.

	Marks.	Articles.	Whose account.
864	W. H. T.	4 b. c.	D. H. Reynolds from W. H. Todd.
	Wet & muddy.		

SULLIVAN.

EXHIBIT 69.

Received in apparent good order from B. H. Smith on board the steamer Belle Lee, whereof Franck — is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Prickard & Buckham (dangers of navigation, fire, explosion, collision, and this memoranda excepted), freight at card rates, or — per bale, and charges $50.00.

Dated at Bellevue, Mar. 23rd, 1873.

Marks.	Articles.	Whose account.
W. H. T.	7 b. c.; wet.	D. H. Reynolds.

SULL'V'N.

EXHIBIT 70.

Memorandum bill of lading shipped by B. H. Smith from Bellevue to Richardson & May at New Orleans, La., per steamer Capital City, Oct. 6, 1876, the dangers of navigation, fire, explosion,
865 and collision excepted, to be delivered on the levee or wharfboat upon payment of 1.50 per bale freight and $50.00 charges.

Marks.	Articles.	
B. H. S. 100.	11 bales cotton.	Ac. D. H. Reynolds.
B. H. S. B. V.	10 bales cotton.	Ac. B. H. Smith.

Privilege of storing and reshipping.

DITTRICH.

EXHIBIT 71.

Shipped in good order and well conditioned by L. Johnson for account of D. H. Reynolds, on board the good steamboat called —, the following articles, being marked and numbered as below, which are to be delivered, without delay, in like good order and condition, at the port of New Orleans, La. (unavoidable dangers of navigation, fire, explosion, and collision only excepted), unto Richardson & May or assigns, he or they paying freight for the said goods at the
866 rate of —, and charges $26.25.

In witness whereof the owner, master, clerk, or agent of said boat hath affirmed to bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Luna, Ark., this — day of Oct., 1876.

Marks.	No. p'k'g's.
B. H. S.	5 bales cotton.

Duplicate.

(Signed) McCONNELL, *Clk.*

EXHIBIT 72.

BELLEVUE, *Jan'y* 19, 1874.

Shipped in apparent good order and well conditioned by B. H. Smith on board the good steamboat C. R., whereof —— —— is master, the following articles, being marked and numbered as below, which are to be delivered without delay, in like good order and condition, at the port of N. O. (unavoidable dangers of navigation and fire only excepted), unto Jurey & Gillis or assigns, he or they paying freight for same at the rate of —, and charges $—.

867 In witness whereof the owner, master, clerk, or agent of said boat has affirmed to bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Marks.	No. p'ck'g's.	Articles.	Ac.
W. H. T.	5		D. H Reynolds.
W. H. T.	7		W. H. Todd.

Charges, $100.00.

SUM'Y.

EXHIBIT 73.

Received in apparent good order from B. H. Smith on board the steamer Belle Lee, whereof Frank Hicks is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Jurey & Gillis (the dangers of navigation, fire, explosion, and collision excepted), as per margin and this memoranda, freight at card rates, or 1.50 per bale, and charges $—.

Dated Bellevue, Feb'y 1st, 1874.

Marks.	Articles.	Whose account.
B. H. S.	9 b. c.	B. H. Smith.
W. H. T.	6 b. c.	Mrs. H. Todd.
868 W. H. T.	6 do.	D. H. Reynolds.

Charges, $68.75.

SPEARS, *Clk.*

EXHIBIT 74.

Received of Benj. H. Smith his draft on Wm. H. Todd, in Philadelphia, Pa., at ten days sight, for $1,700.00, & when paid proceeds to be applied to satisfy execution of claim of E. J. Wright.

July 8th, 1873.

TODD,
Pr. D. H. REYNOLDS.

EXHIBIT 75.

Rec'd of Benj. H. Smith his two sight drafts on Messers Bussey & Co., one for $350.00 & one for $475.00, in all $825.00, to — used in making 1st pay't on land mortgaged to R. E. Bank, of Arkansas, by Silas Craig, as transfer of Sam'l Townsend, & costs in said case, this March 25th, 1875.

D. H. REYNOLDS.

869

EXHIBIT 76.

No. 184.

Duplicate.

Sales by Richardson & May of 11 bales cotton for account of D. H. Reynolds.

Natchez, received Oct. 13th.
Sold to Wm. Francis, Oct. 21.

Marks:

	375			
	436			
3	452			
		1,263 @ 8¼		104 20
	453			
	394			
	490			
B. H. S.	276			
No. 100.	484			
	404			
	397			
	373			
		3,271 @ 7½		245 32
		4,534		349 52

Charges:

Freight, $16.50; charges, pr. b. l., 26.20	42 70	
Rail or riv. ins. on $50 pr. bale, 550 @ ⅝ %	3 41	
Fire do. on sale @ ⅜ %	1 31	
	4 72	
Drayage, stor'g., w'h'g, & labor @ 75c. pr. bale	8 25	
Brokerage on sale @ ¼ %	87	
Commission on sale @ 2½ %	8 74	
		65 28
Net proceeds, currency		$284 28

E. & O. E. New Orleans, Oct. 25, 1876.

(Signed) RICHARDSON & MAY,
Pr. LOGAN.

870

EXHIBIT 77.

No. 238.

Duplicate.

Sales by Richardson & May of 5 bales cotton for account of D. H. Reynolds.

Arlington, received Oct. 20th.
Sold to A. Beaufue, Nov. 1st.

Marks:

	408			
3	390			
B. H. S.	413			
No. 100.		1,211 @ 9¼		112 02
1		400 @ 8½		34
1		401 @ 7¾		31 04
		2,012		177 10

Charges:

Freight, $5; charges, b. l., $26.25	31 25	
Rail or river ins. on $50 pr. bale, 250 @ $\frac{5}{8}$ %	1 56	
Dr'ge, stor'ge, w'h'g, & labor @ 75c. pr. bale	3 75	
Fire do. on sale @ $\frac{3}{8}$ %	66	
Brokerage on sale @ $\frac{1}{4}$ %	44	
Commissions on sale @ $2\frac{1}{2}$ %	4 43	
		42 09
Net proceeds, currency		$135 01

E. & E. New Orleans, Nov. 10, 1876.

(Signed) RICHARDSON & MAY,
Pr. LOGAN.

871 EXHIBIT 78.

No. 35.

Duplicate.

Sales by Richardson & May of 4 bales cotton for account of D. H. Reynolds Esq.

Shannon, received Sept. 15th, 1875.
Sold to L. Christ & Co., Sept. 21st.

Marks:

W. H. T.	481 458 486 479	1,906 @ $11\frac{3}{4}$	223 95

Charges:

Freight, $6; charges per bale, $—	6 00	
Rail or river ins. on $70 per bale, $280 @ $\frac{5}{8}$ %	1 75	
Fire on sale $223.95 @ $\frac{3}{8}$ %	84	
Drayage, storage, w'h'g, & Labor @ 75c. per bale	3 00	
Commission on sale @ $2\frac{1}{2}$ %	5 59	
Brokerage on sale @ $\frac{1}{4}$ %	56	
		17 74
Net proceeds, currency		$206 21

E. & O. E. New Orleans, Sept. 24th, 1875.

RICHARDSON & MAY,
Per BONLEGUY.

872 EXHIBIT 79.

No. 292.

Sales by Bussey & Co. of 4 bales cotton for account of B. H. Smith.

Received M'ch 10th, 1875, per steamer Bell Lee.

Sold to Geo. Foster, D. H. Reynolds, M'ch 15th, 1875.

Marks:

W. H. T. of 10.	428 469 425 467	4 b. c. 1,789 @ $14\frac{1}{2}$	250 93

Charges:

Freight, $—; charges, per bill lading	6	
Drayage, labor, storage, & weighing @ 75c. pr. bale	3	
Brokerage on sale @ ¼ pr. cent.	63	
River insurance on $80 per bale, $230 @ ⅝ %	2	
Fire ins. on sale @ ¼ %	63	
Commissions on sale @ 2½ %	6 35	
		18 61
Net proceeds to credit		$236 32

New Orleans, M'ch 18th, 1875.

BUSSEY & CO.,
Pr. T.

873 EXHIBIT 80.

No. 295.

Sales by Bussey & Co. of 6 bales cotton for account of B. H. Smith.

Received M'ch 10th, 1875, D. H. Reynolds, per steamer Belle Lee.
Sold to Labonisse & Co., M'ch 17, 1875.

W. H. T. of 10.	411 419 430 471 411 478 6 b. c.	
	2,620 @ 14¾	386 45

Charges:

Freight, $—; ch's, per bill lading	9 00	
Drayage, labor, storage, & w'gh. @ 75 — bale	4 50	
Brok. on sale @ ¼ %	96	
	14 46	
River ins. on $80 per bale, $480 @ ⅝ %	3 60	
Fire ins. @ ¼ %	97	
	3 97	
Commissions on sale @ 2½ %	9 66	
		28 09
Net proceeds		$358 36

New Orleans, M'ch 25, 1875.

BUSSEY & CO.,
Per T.

874 EXHIBIT 81.

No. —.

Sales by Jurey & Gillis of 1 bales cotton for account of D. H. Reynolds.

Received per Belle Lee, Feb'y 4th.
Sold to C. Zapata, Feb'y 25th.

Marks:

W H. T.	1 b. c. w'h'g 451 @ 12 Mixed.	54 12

Charges:

Freight, $1.50	1 50	
River ins. on $70 @ ⅝ %	44	
Fire ins. @ ⅝	20	
Storage, weighing, & labor @ 75c. pr. bale	75	
Brokerage on sale @ ¼ %	13	
Commission on sale @ 2½ %	1 35	
		4 37
Net proceeds, currency		$49 75

E. E. New Orleans, M'ch 13th, 1874.

JUREY & GILLIS,
Per JUREY.

875 EXHIBIT 82.

No. —.

Sales by Jurey & Gillies of 7 bales cotton for account of D. H. Reynolds.

Per Belle Lee, Dec. 24.
Sold to Pin, Norwood & Co., Dec. 30, '73.

Marks:

T.	7 b. c. w'h'g	463	
		359	
		326	
		500	
		368	
		459	
		470	
		2945 @ 14	412 30

Charges:

Freight, $10.50	10 50	
River ins. on $490 @ $\frac{5}{8}$ %	3 06	
Fire " " @ $\frac{3}{8}$ %	1 54	
Storage, w'gh., & labor @ 75c. — bale	5 25	
Commission on sale @ 2½ %	10 30	
Brokerage on sale @ ¼ %	1 03	
		31 68
Net proceeds		$380 62

E. E. New Orleans, Jan. 14, 1874.

JUREY & GILLIES,
Per LEVINSIT.

876 EXHIBIT 83.

No.—.

Sales by Jurey & Gillies of 2 bales cotton for account of D. H. Reynolds.

Per Belle Lee, Feb. 4.
Sold to C. H. Taney, Feb. 7.

Marks:

W. H. T.	2 b. c. w'h'g	476	
		440	
		919 @ 13	119 08

Charges:

Freight, $3.00	3 00	
River ins. on $140 @ $\frac{5}{8}$ %	87	
Fire " " @ $\frac{3}{8}$ %	43	
Storage, w'g, & labor @ 75c. pr. bale	1 50	
Commission on sale @ 2½ %	2 98	
Brokerage on sale, ¼ %	29	
		9 07
Net proceeds		$110 01

E. E. New Orleans, Feb. 27, 1874.

JUREY & GILLIES,
Per JUREY.

877 EXHIBIT 84.

No. —.

Sales by Jurey & Gillis of 5 bales cotton for account of D. H. Reynolds.

Received per Great Republic, Ja'y 23.
Sold to Jas. Maybrick & Son, Jan'y 28.

Marks:

W. H. T.	5 b. c. w'h'g	378	
		417	
		372	
		395	
		400	
		1,962 @ 12⅜	242 82

Charges:

Freight, $7.50; charges, pr. b. l'g	7 50	
River ins. on $375 @ ⅝ %	2 34	
Fire ins. ⅜ %	91	
Storage, weighing, & labor @ 75c. per bale	3 75	
Brokerage on sale @ ¼ %	61	
Commission on sale @ 2½ %	6 07	
		21 18
Net proceeds, currency		$221 64

E. E. New Orleans, Feb'y 14th, 1874.
(Signed) JUREY & GILLIS,
Pr. C. LISSPA, JR.

878 EXHIBIT 85.

LAKE VILLAGE, *Ap'l 30th*, 1875.

Benj. H. Smith, Esq.

DEAR SIR: When you were here some days ago you spoke of the judg't against Mr. Todd in favor of Major H. Carlton & of $700 being paid, &c., &c.

To-day I saw the sheriff, & he informs me that he some time since levied an execution on some of Mr. Todd's property & took a stay bond for the payment of the judgment—bond signed by Mr. Todd & Mr. Cohen—& that the stay had run out & that he would have to proceed to make the money next week. I fear nothing can now be done but to pay the bal'e of the judg't. Mr. Todd has admitted am't of judg't, &c., by giving stay bond.

I think I will start to New Orleans & Little Rock on Sunday next.

Respectfully, &c., D. H. REYNOLDS.

EXHIBIT 86.

LAKE VILLAGE, *June 8th*, 1875.

Benj. H. Smith, Esq., Luna.

879 DEAR SIR: Will Mr. Todd be in the county soon? The payment on the Holliday debt has not been as large as he expected it to be & as I hoped for. Has any cotton since the ten bales to Bussey & Co. been shipped to my account for this debt? If there is any more cotton to be applied on this debt please ship it to Messrs. Pritchard & Bickham for my account.

Respectfully, &c., D. H. REYNOLDS.

EXHIBIT 87.

LAKE VILLAGE, ARK., *June 29th*, 1874.

Benj. H. Smith, Esq., Luna, Ark.

DEAR SIR: Yours of 20th inst. in regard to the R. E. Bank mortgage on Bellevue has been received. I have not been able to ascertain any ground of defence to the mortgage. The first payment is due on 1st of January next, and as there does not seem to be any special defence a compromise on terms as to time, &c., perhaps is best. There is no need of immediate action, I think. I will be going up to Little Rock about the 8th or 10th inst., & will write
880 to you if any haste in way of signing agreement, &c.

Respectfully, &c., D. H. REYNOLDS.

EXHIBIT 88.

LAKE VILLAGE, ARK., *July 14th*, 1875.

Capt. Benj. H. Smith, Luna, Arks.

DEAR SIR: Yours of 12th received in regard to the drafts for $475 & $350 in connection with R. E. Bank matters *rec'd*. The $475 I left with Gen'l W. D. Blocker to buy scrip for you. You gave order for $136.50 of this State scrip in payment of taxes. When in Little Rock I left with Gov. Garland the d'ft for $350.00 & an order on Gen'l Blocker for bal'e of scrip purchased with the $475 d'ft, to be used in paying *pro rata* share of costs & fees & 1st instalment of R. E. Bank debt on part of sec. 6, all sec. 7, & part of sec. 18, in T. 15, 1 W. This was left on May 13th & I took receipt for it & would send receipt, but other matters are on it; but this will suffice, as the Gov. has memorandum of the receipt.

Respectfully, D. H. REYNOLDS.

881 EXHIBIT 89.

LAKE VILLAGE, ARK., *May 9th*, 1873.

Capt. B. H. Smith, Luna, Ark.

DEAR SIR: The cotton that Mr. Todd shipped to my account failed to pay my claim by $160.00, &c. He told me he would direct you to pay me any balance, & as I am now in need of it very much in way of paying my taxes, so you will please come in & settle this balance & also a balance on the note in favor of Chas. W. Adams—some $325.00 of —; Mr. Todd has not shipped cotton to my account for it.

Respectfully, &c., D. H. REYNOLDS.

EXHIBIT 90.

LAKE VILLAGE, ARK., *June 8th*, 1875.

Benj. H. Smith, Esq.

DEAR SIR: Yours of 4th came on yesterday making enquiry in regard to pay't of R. E. Bank mortgage on Bellevue.

The court was not in session when I was in Little Rock, &
882 the propo-tion of mortgage & costs falling to you & McMurray & Laundly, respectively, had not been fixed, but court

would again meet soon, so I left the d'ft of $350 & order for bal'e of scrip proceeds of the $475 d'ft with Gov. Garland for you. The am't will not be enough, as the fee will be larger than I thought, & then the $136.50 of scrip out. I told Mr. Garland to let me know bal'e due, & I would see you & get it on. He could cor-espond directly with you on the subject.

Respectfully, &c., D. H. REYNOLDS.

883 EXHIBIT 91.

LAKE VILLAGE, ARK., *June 30th*, 1875.

Rec'd of Wm. H. Todd, to be applied on the decree in favor of Wm. P. Holliday against him, the sum of $688.95, the proceeds of 13 bales cotton on March 24th, 1875, and the further sum of $594.68, the proceeds of ten bales cotton, on May 25th, 1875; in all, $1,283.63.

D. H. REYNOLDS,
Att'y for Holliday.

[Written across the face:] Bussey & Co. Nov. 30th, 1874.

EXHIBIT 92.

$210.00. BELVUE, *Nov. 24th*, 1874.

Ten days after sight pay to the order of D. H. Reynolds, Esq., two hundred & ten dollars, value received, and charge same to ac. of—

BENJ. H. SMITH.

To Mess. Busey & Co., New Orleans, La.
No. 10 | 13 Dec.

EXHIBIT 93.

YELLOW BAYOU PLANTATION, 29*th Apr'l*, 1870.

Rec'd of Benj. H. Smith out of the sales of his shares of two cotton crops of 1868 & 1869 the sum of five thousand eight hundred & seventeen dollars & $\frac{40}{100}$, which is to be credited to him, said Smith, as a further payment to that extent by said Smith to me for
884 the purchase of the half of Belview plantation.

$5,817.40. WM. H. TODD.

Certificate of Record.

STATE OF ARKANSAS, }
County of Chicot, } *ss:*

I, Herbert W. Graves, clerk and *ex officio* recorder for the county and State aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 20th day of Oct., A. D. 1870, and the same is now duly recorded in Record Book " N," page, 380.

In testimony whereof I have hereunto set my hand and affixed the seal of said county on this 20th Oct., A. D. 1870.

H. W. GRAVES, *Clerk.*

EXHIBIT 94.

Received in apparent good order from Isaac Cohen on board the steamer Illinois, whereof Capt. Cheek is master, to be delivered without delay, unless unavoidably prevented, on the levee at New Orleans, unto Richard & May, the dangers of fire, navigation, explosion, and collision excepted, as per margin and this memoranda. Freight at 12 — per bale and charges $—.

Dated at Upper Luna, Ark., May 29th, 1875.

885	Marks.	Articles.	Consignee.	Whose account.
	W H T R R.	Three (3) b. c.	Richardson & May.	Benj. H. Smith; proceeds to the credit of Ruddich & Vicoroy.

Privilege storing & reshipping.

J. EMERSON, *Clerk.*

886 EXHIBIT 95.

No. 860.

Sales by Richardson & May & Co. of 3 bales cotton for account of Benj. H. Smith, Esqs.

Steamer Natchez, rec-ived June 4th, 1875.
Sold to J. T. Daswell, June 8th.

Marks:

W. H. T. R R	3	387 423 398		
		—— 12,08, 14¾		178 18

Charges:

Freight, $4.50	4	50
Rail or river ins. on $80 per bale @ ⅝	1	50
Fire ins. on $178.18 @ ⅜ %		66
Drayage, storage, w'h'g, & labor @ 75 c.— bale	2	25
Commission on — @ 2½	4	45
Brokerage on sale @ ¼ %		44
	——	13 80
Net proceeds		$164 38

E. & O. E. New Orleans, June 11, 1875.

RICHARDSON & MAY,
Per BONLEGUY.

Pro. cr. Ruddick & Vicoroy. (See journal.)

887 EXHIBIT 96.

COLUMBIA, CHICOT CO., ARK., *July 10th*, 1872.

Capt. Benj. H. Smith in account with Ruddick & Vickory, Dr.

To lumber for Bellview:

72	joists,	2 x 8, 16 ft. long,	1,515 ft.
50	"	2 x 8, 18 " "	1,200
200	pieces,	2 x 4, 10 ft. long,	1,350
30	"	2 x 4, 18 " "	360
32	"	4 x 4, 18 " "	768

300 strips, 1 x 4, 20 ft. long,	2,000	
300 " 1 x 4, 16 " "	1,600	
300 " 1 x 4, 10 " "	1,000	
One-inch boards, 18 ft. long,	2,800	
" " " 16 " "	7,500	
" " " 12 " "	1,000	
" " " 10 " "	4,000	
25,093 ft. @ $28 per M		702 60

Cr.

By cash		300 00
Bal. due Bryan	100	
Cohen	209 45	
		309 45

To lumber f. Yellow Bayou:

One-inch boards, 12 ft. long,	10,000 ft.	
12 joist, 3 x 8, 11 ft. long,	264	
65 " 3 x 8, 13 " "	1,690	
18 " 3 x 8, 14 " "	504	
12 pieces, 3 x 4, 9 ft. long,	108	
10 " 2 x 14, 12 ft. long,	280	
4 " 4 x 14, 13 " "	243	
12 " 1¼ x 14, 12 " "	210	
13,299 ft. @ $28 per M		372 37

Cr.

By cash		200 00
Bal. due		$172 37

Rec'd $402.60 in full of bill for Belvue.

RUDDICK & VICTOY.

[Endorsed.]

R. Ruddick.

Capt. B. H. Smith in ac.—

For Belvue	$402 60	
Yellow Bayou	172 37	
		$574 97
Order to Byam	100	
" " Cohen	209 45	
		$309 45

96.

888 EXHIBIT 97.

YELLOW BAYOU, *April 5th*, 1869.

Rec'd of Benj. H. Smith a draft on Wm. H. Todd for one hundred and thirty-six dollars for *for* the draft of Robinson, Lewis and Cracraft on Y. H. & J. Mallen & Co.

Lost.

F. P. WALKS.

EXHIBIT 98.

COLUMBIA, ARK., *Sept. 30th*, 1873.

Mr. B. H. Smith:

Please pay to L. C. Bryan or order the sum of one hundred dollars, for value rec'd, and charge the same to ac.—

Yours truly, RUDDICK & BICOVY.

EXHIBIT 99.

Capt. B. H. Smith to R. Ruddick, Dr.

1870.

Aug. —.	To 20 plank-,	1½ x 12–13 ft.,	390	
	" 3 "	2½ x 12–14 "	105	
			495 ft. @ 2c.	9 90
	120 ft. inch boards.			
	180 " " "	for waggon bed.		
	200 " " "	got by J. W. Trawick.		
	500 ft. @ 3c.			15 00
	3¾ lbs. gum packing @ 60c.			2 25
				27 15

Yellow Bayou.
Rec'd payment.

H. RUDDICK.

889 EXHIBIT 100.

Rec'd of Benjamin H. Smith, at Belvue plantation, on this 26th day of April, 1873, the full amount of the consideration of a deed of bargain and sale of half the Belvue plantation, or the half thereof to said Smith, dated 29 of Oct., 1869, and recorded in the clerk's office of Chicot county and herein referred to as to description, & the residue of the purchase-money of the gin to be paid as a mutial debt out of the crops. The residue of the payment for the gin, $2,350, with in'st at 8 per cent. from Sept. 16th, 1872, till paid. The balance of the purchase-money of said sale of Belvue plantation was the sum of eight thousand two hundred and fifty dollars; settled up to this date, as witness my hand.

WM. H. TODD.

EXHIBIT 101.

LAKE VILLAGE, ARK., *Dec.* 16*th*, 1876.

Rec'd of Benj. H. Smith the sum of $419.25 cash & his draft on Messrs. Bussey & Co. for $1,103.43, payable on January 1st, 1874, & same to be, when draft — paid, in full payment of the judgment rendered at July term, 1876, of the Chicot circuit court in favor of Messrs. Jurey & Gillis against Wm. H. Todd, as principal, & himself & Isaac Cohen, as sureties, except the cost-, which are yet to be auver-ged by him.

890

D. H. REYNOLDS,
Att'y for Jurey & Gillis.

891 DR. EXHIBIT 102. *Todd & Smith in Account Cur*

1869.					
June	14	To freight & charges on 2 box- sundries, p. Mary Houston	275	1 44	21 00
August	16	Paid Foster & Co. for repairing gin machinery.	212	21 52	405 80
	19	Paid drayage on above cotton "	209	21	4 00
Sept.	29	To acceptance W. H. Todd's dr'ft, favor B. S. & Co., due 26-29 inst.	168	52 49	1,250 00
	"	To 2½ for accepting & endorsing above dr'ft	169	1 30	31 25
Oct.	13	" remitted net proceeds 524 sacks cotton seed	154	5 77	150 25
	18	For W. H. Todd's note, favor Brameir & Summers, due 15 inst.	149	95 99	2,577 41
	"	2½ endorsing & accepting above	149	2 38	64 43
	23	Wm. H. Todd's dr'ft, favor B. S. & Co.	144	1 08	30 00
	30	Wm. H. Todd's note, favor Jno. S. Woolfolk, due 27-30 inst., 10 %	137	159 98	4,671 05
Nov.	3	Remitted in settlement of 148 sacks cotton seed	133	1 22	37 49
	6	Invoice lumber, per S. Magenta & May Houston	130	9 72	298 99
	18	Invoice sundries, per S. Magenta	118	4 89	165 57
	"	Wm. S. Todd's note, favor B. S. & Co., due 15-18 inst.	118	76 66	2,598 82
	"	2½ % for accepting & endorsing above	118	1 91	64 97
Dec.	9	Remitted New York sight exchange to T. T. Derringer	97	24 25	1,000 00
	10	Invoice sundries, transferred from Louisville	96	4 13	173 40
	15	Invoice sundries, per st. Magenta	91	4 55	190 06
	16	Remitted New York sight exch'g- fav. Washington Life Ins. Co.	90	9 00	400 00
	18	To acceptance their dr'ft, favor Albert Pike, due 15-18 inst.	88	11 00	500 00
	23	To acceptance their dr'ft, favor Albert Pike, due 20-23 inst.	83	10 37	500 00
	"	2½ com. endorsing & accepting above dr'fts, $500 each, $1,000	83	51	25 00
	30	Remitted New York sight exch'g-, favor Geo. N. Watson	76	4 00	195 00
	"	Invoice ½ box soda crackers, p'r str. Magenta	76	06	2 67
1870.					
Jan'y	4	To acceptance dr'ft, favor Brameir, Sunerers & Co., due 1-4 inst.	71	32 02	804 06
	"	2½ accepting & endorsing above dr'ft	71	79	45 10
	15	Paid their sight dr'ft, favor C. H. Garland	60	3 11	208 00
	"	Invoice sundries from Louisville	60	4 82	322 05
	18	For dr'ft, favor James W. Sodel, on us from Louisville	57	70	50 00
	25	To acceptance their dr'ft, favor John Armons, due 22-25 inst.	50	3 72	298 00
	27	Invoice ties for str. Magenta	48	33	28 07
	29	" lumber for str. Indiana	46	1 91	166 20
Feb'y	21	½ proceeds 3 b. c., $\frac{T S}{B}$, $43.60; $\frac{P S}{T S'}$ 42.78; S. W., 49.25	23	78	135 72
	22	P'd B. Brown, as per receipt, 15 & 8.75	22	13	23 75
	"	Invoice sundries, p'r str. Lindar	22	45	82 31
	"	" " " " ac. B. Brown	22	67	121 64
	"	" lumber, " "	22	15	28 32
	24	Freight on invoice lumber, pr. str. Indiana	20	31	63 16
M'ch	12	P'd " " " " Leonidas	4	02	9 21
	"	" " " currency, $868.50, "	4	01	4 34
	16	" str. Caura on 7 cases furniture & 1 B. O. marble, reship-ed			25 05
	"	Interest on above, at 9 %, interest p'd to date			554 35
					$19,326 49
	16	To balance due us			$1,302 93

rent & Interest with Summers and Branniers. CR.

October 11	By net proceeds 14 b. c.	156	60 09	1,541	18
13	" " 524 sacks cotton seeds	154	5 67	150	25
30	" " 148 " " " "	137	1 28	37	49
Nov. 6	" " 28 b. c.	130	95 78	2,947	46
22	" " 46 "	114	131 52	4,614	52
Dec. 11	" " 32 "	95	77 23	3,252	48
Dec. 23	" " 23 "	83	48 03	2,315	34
1870.					
Jan'y 11	" " 12 "	64	22 01	1,376	01
" 26	" " 1 "	49	03	3	37
Feb'y 17	" " 17 "	27	9 01	1,334	81
March 16	" interest on above, at 9 %, pa.			450	65
"	" balance due			1,302	93

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Exhibit 103.

Copy of Claim of B. H. Smith.

Wm. H. Todd in ac. with B. H. Smith.

1873.			Dr.	Cr.
May	9.	To cash paid Arck Green	1 00	
"	"	" " Nelson, hauling cotton	2 00	
"	"	" " Monroe Smith, "	1 00	
"	"	" " Jackson, "	1 00	
"	"	" " Jane Turner	1 00	
"	"	" " Ben. Patterson, ginning	8 00	
"	"	" " Anna, cotton hand	40 00	
"	"	" " Ellen McFail	1 60	
"	"	" paid Nelson, hauling cotton	50	
"	"	" " Hannah Jones	1 00	
July	15.	" " expense to Sunnyside	10 50	
Aug.	8.	" " Lee Lewis	1 50	
"	30.	" Ben. Patterson, ginning — Anthony	6 00	
"	"	" Nelson, hauling " cotton	1 50	
"	"	" Robinson Ruddick, for labor for Yellow Bayou gin	200 00	
1874.				
Ap'l	20.	" State scrip for Yellow Bayou tax	150 00	
"	"	" L. H. Springer, " "	5 00	
Oct.	31.	" d'ft on Bussey & Co., J. G. B. Simms	636 46	
Nov.	24.	" " " D. H. Reynolds	210 00	
Dec'r	22.	" " " Martin	115 00	
"	"	" 6 grate bars	1 50	
1875.				
Feb'y	8.	" paid Cloves' plow bill	27 00	
Mar.	13.	" " Jno. G. B. Simms	66 00	
"	"	" Bussey & Co., accept's d'fts 636, 46, & 210	18 97	
Ap'l	15.	" paid L. H. Springer's fees	5 00	
"	"	" school warrants	1 50	
893				
1876.				
Ap'l	10.	To d'ft on Bussy & Co.	50 00	
"	17.	" " " for Blocher	185 00	
"	18.	" " " for L. C. Bryan	163 65	
"	19.	" " " for L. H. Springer	20 69	
"	28.	" " " for Chas. Baker	30 37	
May	5.	" " " " Schofield & Co.	120 00	
"	10.	By net proceeds 14 b. c.		477 09
"	20.	" " 4 "		117 06
June	5.	To paid Squire Williams	5 00	
"	7.	" " J. D. Coates	5 50	
"	27.	" " Adam White	3 00	
"	"	" " Squire Williams	1 00	
"	"	By cash from Evelyn		25 00
"	30.	To " paid Mole for Hannibal	5 00	
Aug.	1.	" trace-chains	5 00	
"	"	" am't paid Sheriff Scott's debt	192 60	
"	"	By net proceeds 6 b. c.		188 95
"	16.	" sale cotton seed		99 80
"	"	To cash paid Mr. Mole	50 00	
"	"	" 3 sacks oats	10 00	
"	17.	" paid Adam White	5 00	
"	19.	" 100 yds. bagging	14 00	
"	26.	" by 300 sacks seed		89 20
"	"	" L. C. Bryan on ac't	5 00	
Sept.	2.	" paid E. Mole	20 00	
"	4.	" 3 sacks oats	10 00	
"	14.	" 40 yds. Osnaburg	5 74	
"	16.	" 1 keg nails	3 00	
"	28.	" cash paid Mr. Mole, picking cotton	10 00	

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1876.					
Sept.	28.	To cash paid for bank mortgage	160 00		
Nov.	9.	" bagging & ties	51 39		
"	"	" E. Mole, charges on cotton	25 00		
"	10.	By net proceeds, 16 b. c.			419 25
Dec'r	16.	To paid D. H. Reynolds on Jury & Gillis' debt	419 25		
1877.					
Jan'y	1.	" " " " "	1,103 00		
Mar.	1.	" Jas. F. Robinson	50 00		
"	"	" 100 yds. bagging	15 00		
"	"	" d'ft favor Jennie Ancurs, wages	45 00		
"	20.	" cash " " "	15 00		
"	21.	" paid Wm. Watson, iron work	17 80		
Ap'l	16.	" S. H. Holland, cost Jim Webb's case	22 25		
May	10.	" Bussey & Co.	7 00		
"	"	" " "	415 00		Error
"	"	By net proceeds 10 b. c.			384 86
"	"	" " " 5 "			207 29
"	"	" " " 1 "			22 45
"	"	" " " 1 "			34 76
"	"	" " " 4 "			165 15
"	"	" " " 5 "			199 10
"	"	" " " 1 "			35 58
"	"	" " " 1 "			42 60
"	"	" " " 11 "			385 41
July	18.	To bill supplies Yellow Bayou	43 53		
"	"	" fr't & receiving	2 75		
"	20.	" taxes on Yellow Bayou mules			
"	25.	By net proceeds 3 b. c.			118 02
"	30.	" sales cotton seed			25 20
"	"	To filling and hauling seeds	2 75		

895

1877.					
Aug.	30.	To paid Lucindia Turner, cash	4 00		
"	30.	" Osnaburg, Billy	2 00		
Sept.	27.	" grate bars	5 00		
"	"	" 15 gin saws	15 00		
Dec'r	29.	" 10 sacks oats & meal	40 53		
1878.					
Jan'y	30.	" J. B. Newman & Co., bill goods	67 61		
"	"	" gin whangs	1 25		
"	"	" Jas. F. Robinson	200 00		
Feb'y	4.	" d'ft to self	200 00		
"	29.	" " J. R. Martin	100 00		
"	"	" " self	45 00		
March	1.	" " "	50 00		
"	18.	" paid levee men	77 75		
"	28.	" cash to Wm. Todd	50 00		
"	"	" 2 boxes axle-grease	50		
"	"	" cash to M. L. Rice	200 00		
"	"	" " J. R. Martin	100 00		
"	"	" 4 sacks oats	12 00		
May	8.	" 6 "	18 00		
"	"	" 1 bushel seed corn	1 00		
"	"	" paid Henry Turner, hauling	1 25		
"	28.	" 5 sacks oats	15 00		
"	"	" Alf. Parish, 1 plow-beam	1 00		
"	"	" paid Josh. Turner, cotton	5 00		
June	17.	" 8 sacks oats	24 00		
"	"	" 1 plow	5 00		
"	"	" coal oil and turpentine	1 00		
"	29.	" 6 sacks oats	18 00		
July	20.	" 2 sacks oats	6 00		

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1877.					
July	29.	To 5 sacks oats		15 00	
"	"	" Henry Turner, hauling		1 50	
"	"	" Wm. Watson, plow & sweep		2 25	
"	"	" Paddy & Murray, 2,062 feet, yd., levee		137 06	
"	"	" R. M. Fry, taxes 1876, mules		37 13	
Jan'y	1.	By net proceeds 3 b c.			133 54
"	17.	" " 5 "			177 87
Feb'y	16.	" " 3 "			118 59
1878.					
Feb'y	16.	" " 5 "			176 36
"	21.	" " 9 "			355 24
"	26.	" " 1 "			34 60
Mar.	9.	" " 2 "			32 55
"	12.	" " 16 "			391 64
"	23.	" " 1 "			24 03
Ap'l	6.	" " 7 "			189 94
"	"	" " 7 "			172 52
May	13.	" " 10 "			305 88
"	15.	" " 1 "			22 45
"	21.	" " 1 "			23 07
"	"	To taxes on Walker's place, 1877		145 92	
Aug.	20.	" 1 keg nails		3 50	
"	"	" 35 yds. Osnaburg		5 25	
Sept.	15.	" 17 " "		2 25	
"	26.	" Henry Turner, hauling		2 50	
"	"	By net proceeds 2 b. c.			68 99
Nov.	11.	To 10 sacks oats		30 00	
"	"	" Yellow Bayou, personally, 1877		25 00	
Dec'r	4.	" whangs			
"	"	" 1 brush belt, 12 ft		4 00	

897

1878.					
Dec'r	4.	To Silas Brown		'1 00	
"	"	" 5 bundles ties		15 00	
"	"	" 2 boxes axle-grease		40	
"	"	" oil		25	
"	"	" plow lines		1 00	
"	"	" your draft, due June 1st, 1879		350 00	
1879.					
Jan'y	20.	" gin oil, 50; glt, 25		75	
"	"	" 1 roll bagging		7 00	
"	25.	" am't paid Annie		18 00	
"	"	By Henry Turner's corn rent			
"	"	" Wm. Turner's " "			
"	"	" Josh. Turner's " "			21 00
Feb'y	5.	To draft favor Rice & Bishop		200 00	
"	10.	" 75 yds. bagging		10 50	
"	"	" 2 bundles ties		6 00	
"	18.	" am't due me in S. Brown's cotton		4 00	
"	"	" 4 bbls. corn		2 00	
"	"	" 30 yds. bagging		4 40	
"	"	" Collins, for hauling		10 00	
"	"	" hauling cotton		14 00	
Mar.	28.	" Chas. Moran		420 00	
"	29.	" Lee Golikely, plow-work		26 15	
Ap'l	9.	By net proceeds 28 b. c.			871 14
"	"	To draft favor G. W. Craddock		250 00	
May	22.	By net proceeds 9 b. c.			414 17
"	"	" am't from cotton seed, Holliday			
"	"	To charges on five bales cotton		3 75	
July	1.	By net proceeds 5 b. c.			202 81
"	"	To am't paid for Jennie Todd	}	860 00	
"	"	" bal. due on West Philadelphia	}		

898

1879.					
July	1.	To lot of ground		825 00	
"	"	" services rendered, 1876		1,000 00	
"	"	" " 1877		1,000 00	
"	"	" " 1878		500 00	
1874.					
July	9.	By net proceeds 2 b. c.			117 93
"	20.	" " 1 b. c.			40 92
Dec'r	23.	" " 3 b. c.			170 34
1875.					
Feb'y	11.	" " 8 b. c.			471 63
1879.					
July	1.	" 1 bed, 1 spring, 1 mattress			20 00
"	"	" 1 bureau cover			10 00
"	"	" 1 bed & mattress			15 00
July	1.	" 1 carpet			15 00
"	"	To am't fees sale Bellevue		500 00	
"	"	By error in charge May 10, 1877, Bussey & Co.			415 00
				$12,584 45	$8,049 08

Bellevue acc.

1873.			
Ap'l	10.	To Crawford for fencing	2 50
May	3.	" Biggs & George, 2,400 rails	24 00
July	1.	" Joe Bearse, 500 rails	5 00
"	5.	" Robinson Ruddick for lumber	100 00
"	10.	" paid Robinson Ruddick, draft	200 00
Aug.	1.	" 10 kegs nails	28 50
"	"	" 2 doz. hinges	7 25
"	"	" fr't on nails	5 00
"	"	" 25 M shingles	112 50
"	"	" paid Jim Webb	5 00
Sept.	12.	" " for well	15 00
"	"	" " Ben. Patterson, ginning	40 00
"	20.	" 2 monkey-wrenches	3 00

899

1873.			
Sept.	20.	To repairs on cylinders	238 58
"	"	" fr't "	10 00
"	"	" belting, &c.	27 88
"	"	" 3 bbls. cement	7 50
"	"	" 2 " lime	3 00
"	"	" 1 box glass	5 00
"	"	" drayage	1 00
"	"	" insurance, fr't, &c.	25 00
"	"	" passage up & down, hotel bill	64 65
Oct.	9.	" Jurey & Gillis for brick	84 78
"	"	" fr't on same	36 00
"	20.	" loading on wagon	1 50
Nov'r	8.	" paid brick mason	30 00
"	8.	" bal. due Buckner, H. P.	15 90
"	"	" Ben. Patterson, ginning	55 00
1874.			
Jan'y	30.	" Robinson Ruddick	25 80
Feb'y	2.	" paid fr't	1 00
"	6.	" " Joe Bearse, lumber	13 62
Feb'y	6.	" paid Nelson Stroker, hauling	81 72
"	20.	" Geo. Smith for ditching	2 00
"	"	" paid Lee for iron-work	5 00
"	"	" 15 bales hay & fr't	55 65
Mar.	1.	" paid Williamson, boiler	10 00
"	"	" Lewis Bansts for timber	52 00
"	10.	" county scrip @ 50c	30 00
"	"	" Dave Tripp for hauling	46 37
"	"	" paid Bill Taylor for rails	19 00
"	"	" Geo. Gayton & Biggs for rails	6 00
"	30.	" rafting logs	11 00

900

1874			
Mar.	30.	To Frank Smith, fencing	7 50
"	"	" Geo. Gayton, "	8 50
Ap'l	20.	" paid L. H. Springer for taxes	5 00
June	24.	" " " " levee bond	7 50
"	"	" 21 sacks oats	69 72
"	"	" receiving same	2 00
"	"	" paid Nelson for bricklaying	20 00
"	"	" " Geo. Smith, moving fence	5 00
"	"	" " Simmons for labor	32 25
"	"	" " Trawrick's draft	50 00
"	"	" " board for laborers	15 00
July	12.	" Nelson for hauling	8 25
"	"	" Ben. Patterson for rails	2 00
"	"	" Mose Kindrick, mule hire	5 00
"	25.	" Nelson, hauling	3 00
Aug.	1.	" splitting rails	4 00
"	"	" Ben. Patterson, rails	2 00
"	"	" Dave Tripp "	2 00
Aug.	1.	" 10 sacks oats	39 69
"	"	" 1 b'r'l oil	14 10
"	"	" paid R. R. Sessions for oil	1 50
"	"	" belting	52 20
"	"	" calomel, salts, & blue mass	3 20
"	"	" ½ doz. shovels	7 00
"	"	" drayage	75
"	"	" insurance, 1.00; commission, 1.00	2 00
"	"	" fr't on same	7 00
"	"	" am't paid for State scrip	304 00
"	"	" " " " county " @ 50c.	28 50

901

1874.			
Aug.	1.	To Wash. Aberrather, hauling	25 00
"	"	" " " board	16 00
"	"	" Crawford for shingles & boards	4 00
"	"	" Geo. Smith "	2 50
"	"	" Nelson "	3 75
"	"	" " stroker for rails	15 75
"	"	" Dave Tripp " "	5 00
"	"	" " " " hauling	9 00
"	"	" Nelson " do.	8 00
"	"	" Isaiah Troadso do.	5 00
"	27.	" Bussey & Co., Osnaburg	25 24
"	"	" " " bagging & ties	162 79
"	"	" fr't on same	10 00
Oct.	5.	" oats & bran	50 00
"	19.	" 3 bbls. lime	5 62
"	"	" 5 gallons lard oil, 1873	5 75
Nov.	25.	" 1 bbl. salt	2 25
"	"	" 10 sacks bran	15 68
"	"	" fr't on same	7 55
Dec'r	2.	" paid J. Seaman's draft	20 13
"	"	" J. F. Robinson for Seaman	71 87
"	15.	" building five chimneys	50 00
"	"	" board for 2 men, 1 week each	8 00
"	"	" draft J. T. Whittaker for gin	500 00
"	"	" John Doyle & others for leveeing	398 82
"	22.	" J. Seaman, Sept. 25, labor on gin	25 00
"	28.	" Bussey & Co., bill goods	14 28
"	30.	" d'ft on Bussey & Co., per J. T. Whittaker	878 75
"	31.	" Nelson for hauling	9 25

902

1874.

Dec'r	31.	To Dave Tripp, hauling	7 50
"	"	" Hannibal Thompson for rails	5 95

1875.

Jan'y	5.	" 2,000 ft. lumber	35 08
"	"	" 5 bales hay & fr't	21 70
"	1.	" Dallas for rails	8 75
"	"	" Peter Snowden for watching	5 00
"	"	" Jack " labor	1 00
"	"	" Williams, repairs on gin	75 00
"	6.	" repairs on gin roof	33 00
"	"	" am't paid by me to M. H. Carico for building in 1873	209 58
Feb'y	8.	" paid Lee for iron-work	5 50
"	13.	" J. W. Trawick's draft	50 00
"	20.	" making rails & post	115 50
"	"	" paid for ditching	40 00
"	"	" Nelson for hauling from Jan. 23 to date	17 90
"	22.	" paid Bobb Webb for boards	9 00
"	"	" " Jim Clove's plow bill	134 70
"	27.	" oats, bran, & hay	174 25
"	"	" d'ft favor McAlpine & Butts, mules	100 00
"	"	" " " Isaac Cohen	100 00
Mar.	5.	" repairs on chimneys	13 00
"	16.	" Mose for fencing	2 00
"	"	" Lucindia, 1 hide	1 50
"	17.	" paid Henry Goon for labor	5 00
"	"	" paid Ben. Patterson, engineer	52 00
"	22.	" 2 d'fts favor Isaac Cohen	100 00
"	"	" dr'ft D. H. Reynolds for R. E. B. M.	475 00
"	"	" " " " " "	350 00
"	30.	" 5 gallons fish oil	4 75

903

1875.

Mar.	30.	To belt, hooks, &c.	7 17
Ap'l	15.	" paid Mose for fencing	3 00
"	"	" L. H. Springer, fees	5 00
"	"	" currency paid for taxes, 1874	58 06
"	"	" Wess Mitchell, making rail fence	6 65
May	8.	" Nelson, hauling rails	5 00
June	10.	" paid Williams, repairs on gin	25 00
"	25.	" 10 gallons whiskey	13 50
"	26.	" lumber, R. A. May	41 28
Aug.	1.	" fr't on lumber	14 47
"	5.	" doors	44 00
"	5.	" working on levee	70 00
"	"	" white lead & turpentine	13 50
"	"	" Bussey & Co., gin boxings, &c.	27 49
Sept.	27.	" white lead & hinges	4 25
Oct.	5.	" hinges, screws, & locks	2 00
"	"	" Jack French for corn	3 00
Nov'r	10.	" Whitehill & Co., lumber	120 92
"	"	" hay, nails, & bran	41 75
"	22.	" bagging & ties	182 72
"	"	" fr't on same	6 25
"	"	" 2 kegs white lead	6 00
Dec'r	2.	" d'ft McAlpine & Butts, mules	175 00

1876.

Jan'y	10.	" shingles	27 00
"	15.	" Austin, hauling cotton	3 00
"	"	" Crawford, moving fence	1 50
"	20.	" Geo. Smith, picking cotton for which 2½ bales — taken	113 50
"	25.	" 8 bbls. lime	11 97
"	"	" fr't on same	4 00

904

1876.

Jan'y	25.	To picking Andrews' crop, for which 865 lbs. cotton was taken	78 90
"	29.	" Bob, hauling cotton	1 50
"	"	" Austin, hauling and fencing	2 50
Feb'y	7.	" " fencing	2 00
"	"	" Jack Ogle, on mason	2 50
"	26.	" paid levee men by day	26 00
Mar.	6.	" " J. W. Trawick on ac't	25 00
"	12.	" Richardson & May, bill, bridles, etc.	48 71
"	"	" " " " plow lines	7 63
"	14.	" paid levee hands	7 00
"	30.	" d'ft on R. & May for W. D. Blocher	165 00
Ap'l	2.	" labor on levee	15 00
"	"	" Jim Carroll, order on Cohen	3 75
"	"	" Dan., " " "	4 00
"	"	" J. W. Trawick, on ac't	100 00
"	"	" 2 bbls. salt	3 50
"	"	" fr't on same	2 50
"	7.	" D. W. Carroll, leveeing	2,248 77
"	19.	" d'ft on R. & May for L. H. Springer	61 44
"	"	" county scrip, at 60c.	88 20
"	"	" Richardson & May, interest	22 76
"	25.	" " " " bill, mule collars	28 62
"	"	" paid for making rails	77 41
"	"	" cash paid I. Cohen, July 5th, '75	101 00
July	8.	" Peter, for ginning	2 00
"	"	" Austin, for "	2 00
"	"	" Geo. Mitchell, for ginning	2 00
"	"	" Allen Morse, care of mule	1 00

905

1876.

July	8.	To paid D. Webster for cotton	5 00
"	"	" cash paid I. Cohen, 5.00 & 10.00	15 00
Aug.	4.	" 10 sacks oats	25 00
"	"	" Peter Snowden for labor	1 00
"	18.	" 579 lbs. cotton, G. Robinson ac't	57 90
"	"	" am't due for G. Robinson	45 00
"	"	" J. Williams, on gin	50 00
"	26.	" paid Cohen Dallas, picking	5 75
"	31.	" " Illinois for oats	30 30
"	"	" " Peter, fencing	4 00
Sept.	9.	" 125 yds. Osnaburg	14 99
"	12.	" paid Cohen, in Bluett's ac't	15 37
"	22.	" Shryock Brothers' d'ft	56 79
Oct.	4.	" " " " oats	108 00
"	"	" Receiving fr't	10 00
"	"	" 1 box coal	1 00
"	"	" W. Owens, for hauling rails	37 90
Oct.	21.	" Ben. Patterson, ginning, 1875	35 75
"	21.	" board, 3 men 2 weeks	24 00
Nov'r	1.	" Johnson d'ft R. & May, rec'iv'g	15 00
"	1.	" Richardson & May, bill goods	51 94
"	11.	" J. W. Trawick on ac't	15 00
"	11.	" oats, hay, & bran	11 75
"	11.	" paid Jim Que for chimneys	5 00
"	25.	" 1 gold watch, Cohen	125 00
"	"	" paid on real estate bank mortgage	650 00
Dec'r	1.	" Tony Chinaman, account	19 00
"	"	" oats, bran, & hay	54 00
"	"	" Henry Chinaman, ac't	18 67

906

1877.

Feb'y	3.	To paid Cohen, account	30 00
"	"	" paid Jack's doctor's bill	23 00
"	5.	" hauling cotton	3 50
"	"	" engineer	5 00
"	10.	" " Pitt Given	3 00
"	"	" moving cotton seed	1 00
"	"	" paid Bob Webb for cotton	6 50
"	12.	" Wm. Mose, tobacco	2 00
"	"	" Buckner & Co., bagging	33 36
"	14.	" Simms, tobacco	2 00
Mar.	19.	" Ben Johnson, cotton	7 60
"	21.	" acknowledging contract	3 00
"	22.	" rails	5 00
"	24.	" paid Noe for boiler	100 00
"	"	" G. H. Eckerly & Bro., meat	48 22
"	"	" " " "	38 83
"	"	" 1 keg nails	3 50
"	30.	" Lee Golikely, iron work	5 00
Ap'l	2.	" Johnston, receiving	7 65
"	"	" sharpening two plows	50
"	"	" plowing & planting corn	15 00
"	"	" Jas. F. Robinson, fees	44 57
"	"	" oats, corn, & bran in Feb'y	77 43
"	"	" commission, drayage, & insurance	4 55
"	"	" fr't on same	18 00
"	"	" bagging and ties, Feb'y	25 51
"	"	" tobacco & hoes	24 72
"	4.	" oats, bran, & corn	97 36

907

1877.

Ap'l	24.	To meat & meal	49 37
Jan'y	24.	" paid J. T. Whitaker on note	730 22
June	1.	" 4 bbls. meal	11 40
"	"	" drayage & freight	2 50
"	8.	" Johnston, receiving	6 05
"	"	" G. H. Eckerly, meat & meal	50 00
"	"	" Dave Tripp, hauling & labor	60 75
"	"	" taxes for 1875, paid	249 87
"	20.	" meat	30 27
July	14.	" Johnson & Baker	16 30
Aug.	1.	" J. W. Trawick, order	25 00
"	"	" filling, seed, & hauling	9 87
"	2.	" Lee Golikely, iron work	5 00
"	"	" Harry Mitchell, engineer	9 00
"	15.	" John Jeep, levee	5 50
"	"	" Buck, filling hole at gate	1 50
"	"	" meat & meal	50 21
Sept.	1.	" fr't receiving	29 30
"	"	" Jeff for labor	3 00
"	"	" plank, Jackman	16 00
"	"	" " Dickinson	7 05
"	"	" Jim Well for digging well	7 00
"	"	" 10 sacks oats	17 80
"	"	" 5 bbls. meal	14 00
"	"	" J. W. Trawick on ac't	25 00
"	"	" wheelbarrows	19 00
"	"	" shovels	12 00
"	"	" cane knives	1 50
"	"	" blankets	26 40

908

1877.			
Sept.	1.	To spirit-level	75
"	"	" 1 keg nails	2 45
"	"	" 10 sacks oats	17 42
"	"	" 5 sacks bran	4 80
"	"	" Osnaburg	22 30
"	"	" J. W. Trawick	50 00
"	"	" McAlpine & Butts, mules	100 00
"	"	" 1 bbl. salt	1 50
"	"	" blankets	8 80
"	"	" shovels	7 46
"	"	" meat & meal	24 40
Oct.	9.	" meal	11 35
"	"	" fr't receiving	22 50
"	"	" " "	20 50
"	"	" saws & idler frames	15 00
"	"	" padlocks, axe, & handle	4 25
"	"	" Dave & Austin, hauling	2 00
Nov.	1.	" ½ doz. wheelbarrows	9 25
"	"	" " " blankets	14 40
"	"	" " " shovels	6 00
"	"	" ½ bbl. oil	7 35
"	"	" 5 sacks oats	9 98
"	"	" 5 sacks bran	4 90
"	"	" 6 bales hay	11 20
"	"	" 4 bbls. meal	8 40
"	"	" 2 kegs nails	5 50
"	"	" drayage	1 20
"	"	" insurance	1 15
"	10.	" Austin, Dave & George	1 50

909

1877.			
Nov.	19.	To meat	19 60
Dec'r	17.	" 1 bundle ties	3 00
"	"	" blankets, 2.00; baskets, 2.00	4 00
1878.			
Feb'y	1.	" J. W. Trawick	150 00
"	"	" John Bergon	62 50
"	4.	" fr't & receiving	24 46
"	"	" coffin trimmings for levee man	3 70
"	"	" 1 wagon-tongue	1 75
"	24.	" oats & corn	59 50
"	"	" Clove's plow bill	114 85
"	"	" fr't & receiving	27 53
"	"	" Lee Golikely, iron work	5 00
"	"	" 1 coil plow line	6 50
Mar.	4.	" McAlpine & Butts	66 25
"	13.	" oats & corn	97 28
"	20.	" labor on fence	17 95
"	"	" plowing corn land	5 00
"	20.	" fr't & receiving	50 15
"	"	" repairs on levee	3,240 22
			$18,889 46

1873.			
Sept.	10.	To net proceeds 11 b. c.	555 00
Oct.	15.	" " 3 "	133 70
1874.			
June	27.	" " 4 "	265 77
July	9.	" " 4 "	234 81
"	"	" sales cotton seed	150 00
Sept.	1.	" net proceeds 1 b. c.	21 57
"	"	" " 8 "	349 62
Oct.	1.	" " 2 "	77 93
Dec'r	2.	" " 1 "	37 69

910

1874.					
Dec'r	28.	To net proceeds 10 b. c.			556 02
1875.					
Jan'y	11.	" goods			10 80
"	15.	" net proceeds 20 b. c.			1,015 42
"	25.	" "	12	"	613 75
Feb'y	13.	" "	11	"	614 05
"	"	" "	2	"	93 22
"	"	" "	3	"	172 99
Mar.	6.	" "	9	"	513 92
"	17.	" "	7	"	386 67
"	26.	" "	5	"	279 02
July	5.	" sales cotton seed			400 00
Dec'r	24.	" net proceeds 9 b. c.			428 34
1876.					
Jan'y	10.	" "	8	"	351 91
Feb'y	3.	" "	1	"	27 55
"	7.	" "	2	"	60 85
"	9.	" "	17	"	710 36
"	18.	" "	22	"	1,086 30
Ap'l	14.	" "	13	"	545 79
July	11.	" "	3	"	113 43
"	19.	" "	1	"	31 83
Aug.	15.	" "	4	"	149 75
Sept.	11.	" "	5	"	171 70
Oct.	18.	" "	10	"	310 06
1877.					
Jan'y	9.	" "	9	"	398 72
Feb'y	20.	" "	8	"	299 77
Mar.	29.	" "	8	"	320 46
Ap'l	25.	" "	1	"	39 19
"	18.	" "	2	"	67 88
May	3.	" "	1	"	36 04

911

1877.					
May	3.	To net proceeds 7 b. c.			244 68
1878.					
Jan'y	21.	" "	6	"	275 19
"	"	" "	3	"	114 46
"	"	" "	2	"	85 27
Feb'y	16.	" "	2	"	60 27
"	"	" "	1	"	30 67
"	"	" "	1	"	32 70
"	"	" "	3	"	100 68
"	"	" "	2	"	72 60
"	14.	" "	1	"	33 65
"	"	" "	1	"	28 50
"	"	" "	2	"	64 26
"	"	" "	2	"	65 25
"	"	" "	2	"	70 75
Ap'l	12.	" "	15	"	535 21
					$13,440 02

642

Am't W. H. Todd's ac., as per foregoing statement	$4,535 37
½ am't plantation ac., as per foregoing statement	2,724 72
Bal. due B. H. Smith	7,260 09

STATE OF ARKANSAS, } sct:
County of Chicot, }

I, B. H. Smith, do solemnly swear that nothing has been paid or delivered towards the satisfaction of the above and foregoing
912 demand except what is credited thereon, and that the sum of seven thousand two hundred and sixty $\frac{8}{100}$ dollars above demanded is justly due, so help me God.

BENJ. H. SMITH.

Subscribed and sworn to before me this 6th day of October, 1879.
GEO. T. WILKINSON, *Clerk*,
By W. W. WILKINSON, *D. C.*

Endorsements.

Examined, approved, and allowed this 6th day of October, 1879.
L. H. SPRINGER, *Adm'r.*

Filed in my office this Oct. 13th, 1879.
GEO. T. WILKINSON, *Clk.*

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court & *ex officio* clerk of the probate court within and for the county & State aforesaid, do hereby certify that the preceding 19 pages contain a true & correct copy of the claim of Benjamin H. Smith probated against the estate of William H. Todd, dec'd, as the same appears of file in my office.

Witness my hand & the seal of said court of probate hereto affixed this the 3rd day of Sept., 1883.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

913 EXHIBIT 104.

Rec'd, Lake Village, Arks., September 16th, A. D. 1872, three promissory notes as follows, to wit, each dated at Lake Village, Ark., Sept. 16, 1872, one for the sum of two thousand dollars, payable one year after date, one for eleven hundred and seventy-five dollars, payable two years after date, and one for eleven hundred and seventy-five dollars, payable three years after date, each bearing interest at the rate of eight per cent. per annum from date until paid, and each signed by Benj. H. Smith and by the said Benj. H. Smith for Wm. H. Todd, said notes being payable at the Canal Bank in New Orleans, La., said notes being received by us as attorneys for the estate of Horace F. Walworth, dec'd, in the purchase by said Todd & Smith of the W. $\frac{1}{2}$ N. W. $\frac{1}{4}$ of section eight (8), in township 15 south, range 1 west, this day sold by Jno. G. B. Simms, as commissioner, under a decree of the Chicot circuit *circuit* court, in chancery, in favor of said estate, it being understood and agreed that said estate is to retain a mortgage lien on said land for the payment of said notes. It is further understood, whereas the power of attorney from said Todd to said Smith authorizing him to sign

said notes is not in exact conformity with the notes, that before said sale shall be confirmed or considered final the said Todd
914 shall, by his further act or deed, confirm or ratify the act of said Smith in signing said notes.

CARLTON & SIMMS, *Atty's.*

EXHIBIT 105.

$1,175.00. LAKE VILLAGE, ARK., *Sept. 16th*, 1872.

Two years after date we promise to pay to the order of John S. Whitaker, ex't'r, &c., eleven hundred & seventy-five dollars, payable at Canal Bank, in New Orleans, La., with 8 % interest from date until paid, value received.

No. —.

WM. H. TODD,
By B. H. SMITH. [SEAL.]
BENJ. H. SMITH. [SEAL.]

[R. S., 50c.] [R. S., 25c.]

EXHIBIT 106.]

$1,175.00. LAKE VILLAGE, ARK., *Sept. 16th*, 1872.

Three years after date we promise to pay to the order of John S. Whitaker, ex't'r, &c., eleven hundred & seventy-five dollars, payable at Canal Bank, in New Orleans, La., with 8 % interest from date until paid, value received.

No. —.

WM. H. TODD,
By B. H. SMITH. [SEAL.]
BENJ. H. SMITH. [SEAL.]

[R. S., 50.] [R. S., 25.]

EXHIBIT 107.

$2,000.00. LAKE VILLAGE, ARKS., *Sept. 16th*, 1872.

915 One year after date we promise to pay to the order of John S. Whitaker, ex't'r, &c., two thousand dollars, payable at Canal Bank, in New Orleans, La., with 8 % interest from date till paid, value received.

W. H. TODD,
By B. H. SMITH, [SEAL.]
Attorney-in-Fact.
BENJ. H. SMITH. [SEAL.]

[R. S., 50c.] [R. S., 25c.]

EXHIBIT 108.

CLERK'S OFFICE, CHICOT CO., *April 18th*, 1871.

W. H. Todd, in ac. with 1 S. M. Graves.

For certified transcript of ans. of A. C. George to pet. of W. H. Tood	7 75
For certified transcript of sup. bill of A. Pikes	4 00
" certified copy of ans. of C. H. C. to supplemental bill	10 00
" costs in following cases:	
" No. 82, creditors' bill	34 85
" " 68, Wright *v.* Walker	22 65
" " 166, Todd *v.* Street, C. H. C.	2 60
" Turner *v.* Turner	5 00
	$86 85
Costs on reduction of taxes	13 15
	100 00

Rec'd payment, 1 S. M. GRAVES, *Clerk.*

916 EXHIBIT 109.

LITTLE ROCK, *Feb'y 26th*, '77.

Received of B. H. Smith forty dollars as sheriff's fees and commissioner's dues on executioner's sales in case of McMurray & Co. *vs.* W. H. Todd.

S. H. HOLLAND,
Sheriff of Chicot County.

30.60. EXHIBIT 110.

Received of B. H. Smith thirty dollars and sixty cents, being for costs on executions against Wm. H. Todd in favor of Herman Carloin.

S. H. HOLLAND.

EXHIBIT 111.

Rec'd, Lake Village, Arks., Jan'y 24th, '78, of B. H. Smith his sight draft on Messrs. S. B. Newman & Co., of New Orleans, of this date, for two hundred dollars on ac. of fees due me by Wm. H. Todd, Esq.
Jan'y 24th, 1878. J. F. ROBINSON.

EXHIBIT 112.

$475. 566. LITTLE ROCK, ARKS., *Feb. 1st*, 1871.

Thirty days after date pay to the order of S. H. Tucker four
917 hundred and seventy-five dollars, value received, and charge to account of Stewart, Norton & Co., New Orleans, La.

WM. H. TODD.

[R. S., 25c.]

EXHIBIT 113.

OFFICE 188 GRAVIER STREET,
NEW ORLEANS, *Nov'b. 9th*, 1876.

Invoice of merchandise purchased and shipped by Bussey & Co., per Steamer Tho. Dean, account of B. H. Smith, Belleview.

2 rolls jute, 200, 12¾	25 50	
6 b'dles ars. ties, 3.36	20. 16	
25 h'ks twine, 25, 15	3 75	
Dray.	40	
		49 81
Charges:		
Insurance on $54, @ ⅝ per cent.	34	
Commission, @ 2½ per cent.	1 24	
		1 58
		51 39

Charged to your account.

BUSSY & CO.

EXHIBIT 114.

No. 433.

Sales by Bussey & Co. of 7 bales cotton, received M'ch 19, 1878, per T. Dean, and sold for account of B. H. Smith.

Sold to Christ & Co., Ap'l 2nd, 1878.

	398		
	400		
	366		
	420		
	358		
B. H. S.	367		
7 b. c.	445		
	2,754, @ 8		220 32
Charges:			
Freight, $7; charges pr. bill lading, $26.25		33 25	
Drayage, labor, storage, & weighing, @ 75c. per bale		5 25	
Brokerage on sale, @ ¼ %		55	
		5 80	
River insurance on $55 per bale, $—, @ ⅝ %		2 41	
Fire insurance on sale, @ ¾ %		83	
		3 24	
Commissions on sale, @ 2½ %		5 51	
			47 80
Net proceeds			$172 52

New Orleans, Ap'l 6th, 1878.

CYRUS BUSSEY,
Per A.

EXHIBIT 115.

No. 433.

Sales by Bussey of 7 bales cotton, received M'ch 26, 1878, per Chouteau, and sold for account of B. H. Smith.

Sold to Christ & Co., Ap'l 2nd, 1878.

		470			
	2 b. c.	374			
		844, @ 8		67 52	
		462			
B. H. S.		445			
		488			
		371			
5	"	440	2,206, @ 7¼	159 93	
					227 45

Charges:

Freight, $7; charges pr. bill lading, $15.75	22 75	
Drayage, labor, storage, & weighing, @ 75c. per bale	5 25	
Brokerage on sale, @ ¼ %	57	
	5 82	
River insurance on $55 per bale, $—, @ ⅝ %	2 41	
Fire insurance on sale, @ ⅜ %	85	
	3 26	
Commissions on sale, @ 2½ %	5 68	
		37 51
Net proceeds		$189 94

New Orleans, Ap'l 6th, 1878.

CYRUS BUSSEY,
Per A.

EXHIBIT 116.

BELLEVIEW, *Nov.* —, 1876.

B. H. Smith to Thompson Dean, Dr.

918 To freight on 2 rolls bagg., 6 b'dles ties, 25 h'ks twine, $2.15.

919

EXHIBIT 117.

No. 288.

Sale by Bussey & Co. of one bale cotton, received Feb'y 24, 1875, per steamer Belle Lee, and sold for account of W. H. Todd.

Sold to G. Foerster, M'ch 9, 1875.

W. H. T. Of 10.	1 b. c., 418, @ 13¼		55 38

Charges:

Freight, $—; charges per bill lading, $—	1 50	
Drayage, labor, storage, and weighing, @ —c. per bale	75	
Brokerage on sale, @ ¼ per cent.	14	
	2 39	
River insurance on $— pr. bale, $70, @ ⅝ per cent.	44	
Fire insurance on sale, @ ¼ per cent.	14	
	58	
Commissions on sale, @ 2½ per cent.	1 38	
		4 35
Net proceeds to credit		$51 03

New Orleans, M'ch 12, 1875.

BUSSEY & CO.,
Per T.

920 EXHIBIT 118.

No. 286.

Sale by Bussey & Co. of 9 bales cotton, received Feb'y 24, 1875, per steamer Belle Lee, and sold for account of W. H. Todd.

Sold to J. W. Jones, M'ch 6, '75.

	375 353 369	2 b. c., 728, @ 13½	98 28
W. H. T.	382 348 385	3 b. c., 1,099, @ 15	164 85
	374 392 400	4 b. c., 1,551, @ 14½	224 89
Of 10.	9		488 02

Charges:

Freight, $13.50; charges per bill lading, $1.45		19 95	
Drayage, labor, storage, and weighing, @ 75c. per bale		6 75	
Brokerage on sale, @ ¼ per cent.		1 22	
		27 92	
River insurance on $70 per bale, $630, @ ⅝ per cent.		3 94	
Fire insurance on sale, @ ¼ per cent.		1 22	
		5 16	
Commissions on sale, @ 2½ per cent.		12 20	
			45 28
Net proceeds to credit			$442 74

New Orleans, M'ch 10, 1875.

BUSSEY & CO.,
Per T.

921 EXHIBIT 119.

No. 303.

Sale by Bussey & Co. of 15 bales cotton, received Mar. 31, 1875, per steamer S. Silver Pargood, and sold for account of W. H. Todd.

Sold to H. A. Frederig, Ap'l 5, 1875.

W. H. T.	+360 413 413 381 466 363 360 351 424 374 3,905	+396 360 455 381 378 1,970	15 b. c., 5,875, 15¼	895 94

Charges:

Freight, $—; charges pr. bill lading, $—	22 50		
Drayage, labor, storage, and weighing, @ 75c. per bale	11 25		
Brokerage on sale, @ ¼ per cent.	2 24		
		35 99	
River insurance on $80 per bale, $1,200, @ ⅝ per cent.	7 50		
Fire insurance on sale, @ ⅜ per cent.	3 36		
		10 86	
Commissions on sale, @ 2½ per cent.		22 40	
			69 25
Net proceeds to credit			$826 69

New Orleans, Ap'l 17, 1875.

BUSSEY & CO.,
Per B.

922 EXHIBIT 120.

No. —.

Sale by Bussey & Co. of 1 bales cotton, received Ap'l 10th, 1878, per "Choteau," and sold for account of B. H. Smith.

Sold to H. A. Frederic, May 11th, 1878.

B. H. S.	One b. c., 306 lbs., @ 8½c.	26 01

Charges:

Freight, $—; charges pr. bill lading, $—		$1	
Drayage, labor, storage, & weighing, @ 75c. pr. bale	75		
Brokerage on sale, @ ¼ %	07		
		82	
River insurance on $55 pr. bale, $55, @ ⅝ %	34		
Fire insurance on sale, @ ¼ %	13		
		47	
Commissions on sale, @ 2½ %		65	
			2 94
Net proceeds			$23 07

New Orleans, May 21st, 1878.

CYRUS BUSSEY,
Per A.

923 EXHIBIT 121.

No. —.

Sale by Bussey & Co. of 10 bales cotton, received April 10, 1878, per Choteau, and sold for account of Mr. B. H. Smith.

Sold to M. Quail, May 7, 1878.

B. H. S.	420 362 390 440 376 409 551 409 414 507	
	stained & dusty, 4,278, 8	342 24

Charges:

Freight, $—; charges pr. bill lading, $—	$14 75		
		14 75	
Drayage, labor, storage, & weighing, @ — c. per bale	7 50		
Brokerage on sale, @ ¼ %	85		
		8 35	
River insurance on $55 per bale, $550, ⅝ %	3 43		
Fire insurance on sale, @ ⅜ %	1 28		
		4 71	
Commissions on sale, @ 2½ %		8 55	
			36 36
Net proceeds			$305 88

New Orleans, May 13th, 1878.

CYRUS BUSSEY,
Per A.

924 EXHIBIT 122.

No. —.

Sale by Bussey & Co. of 1 bales cotton, received M'ch 19, 1878, per Thompson Dean, and sold for account of B. H. Smith.

Sold to Ben. Buisson, May 10, 1878.

B. H. S.	396 7⅜	29 20

Mixed with tow, stained, & dusty.

Charges:

Freight $—; charges per bill lading, $—		4 75	
Drayage, labor, storage, & weighing, @ — c. per bale	75		
Brokerage on sale, @ ¼%	07		
		82	
River insurance on $— per bale, $55, @ ⅝ %	34		
Fire insurance on sale, @ ⅜ %	11		
		45	
Commissions on sale, @ 2½%		73	
			6 75
Net proceeds			$22 45

New Orleans, May 15, 1878.

CYRUS BUSSEY,
Per A.

925 EXHIBIT 123.

No. 226.

Sale by Bussey & Co. of 5 bales cotton, received Jan'y 27, 1877, per Jas. Howard, and sold for account of B. H. Smith.

Sold to —— ——, Jan'y 31, 1877.

	400	
	395	
B. H. S.	417	
Y. B.	388	
	390	
	—— 5 b. c., 1,990, 11¼	223 87

Charged.

Charges:

Freight, $5; charges pr. bill lading, $7.15	12 15	
Drayage, labor, storage, & weighing, @ 75c. pr. bale	3 75	
Brokerage on sale, @ ¼ %	56	
		16 46
River insurance on $60 pr. bale, $300, @ ⅝ %	1 88	
Fire insurance on sale, @ ⅜ %	84	
		2 72
Commissions on sale, @ 2½ %		5 59
		24 77
Net proceeds		$199 10

New Orleans, Feb'y 7, 1877.

BUSSEY & CO.,
Per B.

926

EXHIBIT 124.

No. 189.

Sale by Bussey & Co. of 10 bales cotton, received Dec. 14, 1876, per Carondelet, and sold for account of B. H. Smith, Esq.

Sold to —— ——, Dec. 14, 1876.

	418	370	
	422	347	
	383	—— 2 b. c., 717, @ 10	71 70
B. H. S.	340		
Y. B.	453		
	435		
	313		
	325		
	—— 8 b. c., 3,089, @ 10¼		347 52
			419 22

Charged.

Charges:

Freight, $—; charges pr. bill lading, $—	10	
Drayage, labor, storage, & weighing, @ 75c. pr. bale	7 50	
Brokerage on sale, @ ¼ %	1 05	
		18 55
River insurance on $60 pr. bale, $600, @ ⅝ %	3 75	
Fire insurance on sale, @ ⅜ %	1 58	
		5 33
Commissions on sale, @ 2½ %		10 48
		34 36
Net proceeds		$384 86

New Orleans, Dec. 19, 1876.

BUSSEY & CO.,
Per G.

927

EXHIBIT 125.

No. 202.

Duplicate.

Sale by Bussey & Co. of — bales cotton, received Dec. 31, 1876, per Carondelet, and sold for account of B. H. Smith.

Sold to —— ——, Jan'y 2, 1877.

	408		
	400		
B. H. S.	343		
Y. B.	405		
	400		
	—— 5 b. c., 1,956, @ 11½		224 94

Charged.

Charges:

Freight, $—; charges pr. bill lading, $—	$5		
Drayage, labor, storage, & weighing, @ 75c. per bale	3 75		
Brokerage on sale, @ ¼%	56		
		9 37	
River insurance on $60 pr. bale, $300, @ ⅝%	1 88		
Fire insurance on sale, @ ⅜%	84		
		2 72	
Commissions on sale, @ 2½%		5 62	
			17 65
Net proceeds			$207 29

New Orleans. Jan. 8, 1877.

BUSSEY & CO.,
Per G.

928 No. 203.

Sale by Bussey & Co. of 5 bales cotton, received Dec. 31, 1876, per Carondelet, and sold for account of B. H. Smith.

Sold to Apps & K., Jan 2, 1877.

408
400
343
405
400
— 5 b. c., 1,956, @ 11½ 224 94

Charged.

Charges:

Freight, $—; charges pr. bill lading, $—	5		
Drayage, labor, storage, & weighing, @ 75c. pr. bale	3 75		
Brokerage on sale, @ ¼%	56		
		9 31	
River insurance on $60 pr. bale, $300, @ ⅝%	1 88		
Fire insurance on sale, @ ⅜%	84		
		2 72	
Commissions on sale, @ 2½%		5 62	
			17 65
Net proceeds			$207 29

New Orleans, Jan. 8, 1877.

BUSSEY & CO.,
Per G.

929 EXHIBIT 126.

No. 8393.

Sale by Bussey & Co. of one bales cotton, received June 29, 1874, per steamer Katie, & sold for account of B. H. Smith, Luna, Ark.

Sold to J. W. Jones, July 16, 1874.

Inferior.

W. H. T.
[T] 1 b. c., 408, 11 44 88
Of 3.

Charges:

Freight, $—; charges pr. bill lading, $—	1 50		
Drayage, labor, storage, and weighing, @ —c. per bale	75		
Brokerage on sale, @ ¼ per cent.	11		
		2 36	
River insurance on $— pr. bale, $75, @ ½ per cent.	37		
Fire insurance on sale, @ ¼ per cent.	11		
		48	
Commissions on sale, @ 2½ per cent.		1 12	
			3 96
Net proceeds to credit			$40 92

New Orleans, July 20, 1874.

BUSSEY & CO.,
Per BROOKS.

930 EXHIBIT 127.

No. 239.

Sale by Bussey & Co. of 3 bales cotton, received Dec. 16, 1874, per steamer Belle Lee, and sold for account of B. H. Smith.

Sold to J. M. Dixon, Dec. 19, 1874.

W. H. T.	444 443 450	
	3 b. c., 1,337, @ 13¾	183 84

Credited.

Charges:

Freight, $—; charges per bill lading, $—	$4 50		
Drayage, labor, storage, and weighing, @ 75c. per bale	2 25		
Brokerage on sale, @ ¼ per cent.	46		
		7 21	
River insurance on $65 per bale, $195, @ ⅝ per cent.	1 23		
Fire insurance on sale, @ ¼ per cent.	46		
		1 69	
Commissions on sale, @ 2½ per cent.		4 60	
			13 50
Net proceeds to credit			$170 34

New Orleans, Dec. 23, 1874.

BUSSEY & CO.,
Per B.

931 EXHIBIT 128.

No. 259.

Sale by Bussey & Co. of 8 bales cotton, received Dec. 31, 1874, per steamer Belle Lee, and sold for account of B. H. Smith.

Sold to J. Ralli, Jan'y 15, 1875.

W. H. T.	423 493 470 425 443 450 494 436	
	8 b. c., 3,634, @ 14	508 76

J.
Credited.

Charges:

Freight, $—; charges per bill lading, $—	12		
Drayage, labor, storage, and weighing, @ 75c. per bale	6		
Brokerage on sale, @ ¼ per cent.	1 27		
		19 27	
River insurance on $65 per bale, $520, @ ⅝ per cent.	3 24		
Fire insurance on sale, @ ⅜ per cent.	1 90		
		5 14	
Commissions on sale, @ 2½ per cent.		12 72	
			37 13
Net proceeds to credit			$471 63

New Orleans, Jan. 30, 1875.

BUSSEY & CO.,
Per T.

932 EXHIBIT 129.

No. 8369.

Sale by Bussey & Co. of 2 bales cotton, received June 29, 1874, per steamer Katie, and sold for account of B. H. Smith, Luna, Ark.

Sold to C. Valetta, July 2, 1874.

W. H. T. [T.]	453 472	2 b. cotton, 925, @ 13¾	127 19

Of 3, 1 rejected.

Charges:

Freight, $—; charges per bill lading, $—	3		
Drayage, labor, storage, and weighing, @ 75c. per bale	1 50		
Brokerage on sale, @ ¼ per cent.	32		
		4 82	
River insurance on $75 per bale, $150, @ ⅝ per cent.	94		
Fire insurance on sale, @ ¼ per cent.	32		
		1 26	
Commissions on sale, @ 2½ per cent.		3 18	
			9 26
Net proceeds to credit			$117 93

New Orleans, July 9, 1874.

BUSSEY & CO.,
Per B.

933 EXHIBIT 130.

No. —.

Sales by Bussey & Co. of 27 bales cotton for account of B. H. Smith.

Received M'ch 4th, 1879, per Chouteau.
Sold to H. A. Frederic, M'ch 11th, 1879.

Marks:

	397	400	360	425		
	299	416	460	435		
	348	517	363	400		
B. H. S.	427	336	444	405	2 apcs.	
Y. B.	340	389	352	426		
	336	440	436	442		
27 of 28.	357	439		446		
	2,504	2,937	2,415	2,979	10,835, 8½	920 98

1 water packed.

Charges:

Freight, $28; ch'g's pr. bill lading, $—, ch'g'd in ac.	28 00	
Drayage, labor, stor'g., & weighing, @ 75c. pr. bale	20 25	
Brokerage on —, @ ¼ %	2 30	
River ins. on $— pr. bale, $1,080, @ ⅝ %	6 75	
Commission on sale, @ 2½	23 02	
Fire ins. on sale, @ ⅜ %	3 45	
		87 77
Net proceeds		$837 21

New Orleans, M'ch 13th, 1879.

CYRUS BUSSEY,
Pr. A.

934 No. 33.

Sales by Bussey & Co. of 1 bales cotton for account of B. H. Smith.

Received M'ch 4th, 1879, per Chouteau.
Sold to J. V. Horton, M'ch 31st, 1879.

Marks:

B. H. S.
J. B. Water packed. 412, 9 — 37 08

Charges:

Freight, $—; charges pr. bill lading, $—	1	
Drayage, labor, st'r'g., & weighing, @ — pr. bale	75	
Brokerage on sale, @ ¼ %	09	
River ins. on $— pr. bale, $40, ⅝ %	25	
Fire ins. on sale, ⅜ %	14	
Commission on sale, 2½ %	92	
		3 15
Net proceeds		$33 93

E. E. New Orleans, Ap'l 9, 1879.

CYRUS BUSSEY,
Pr. A.

935 EXHIBIT 131.

No. 38.

Credited.

Sale by Bussey & Co. of 5 bales cotton, received May 23, 1879, per Scudder, and sold for account of B. H. Smith.

Sold to H. A. Frederic, June 28, 1879.

	378	
	439	
B. H. S.	411	
Y. B.	343	
	433	
	2,004, 11	220 44

Charges:

Freight, $—; charges pr. bill lading, $—	5	
Drayage, labor, storage, & weighing, @ —c. per bale	3 75	
Brokerage on sale, @ ¼ %	55	
		9 30
River insurance on $— pr. bale, $275, @ ⅝ %	1 72	
Fire insurance on sale, @ ½ %	1 10	
		2 82
Commissions on sale, @ 2½ %	5 51	
		17 63
Net proceeds		$202 81

New Orleans, July 1, 1879.

CYRUS BUSSEY,
Per A.

936 X 132.

No. 132. BROOKLYN, *August 29th*, 1867.

The Central Bank of Brooklyn, pay to the order of Wm. H. Todd, Esq., twenty-five hundred and fifty-dollars.

$2,550.00. BENJ. H. SMITH.

Endorsed: Good. Moxfield, Teller. Wm. H. Todd.

Pay Jay Cooke & Co. or order for collection.

C. T. YUKER, JR., & CO.
J. P. PERKES.

To the credit Jay Cook & Co., Comstock.

937 *Deposition of George T. Wilkinson.*

Ans. My name is George T. Wilkinson; 36 years of age; reside in Lake Village, Chicot county, Arkansas, and occupation, clerk of the circuit court of said county. I have the original papers in my office of the suit of Benjamin H. Smith against William H. Todd, and now have them in my hands.

The complaint and affidavit thereto of said suit are in the handwriting of Maj. James F. Robinson. The affidavit was signed and sworn to by Benjamin H. Smith before me as deputy clerk. The affidavit for the attachment is in the handwriting of Maj. Robinson, and it was signed and sworn to by Benjamin H. Smith before me as deputy clerk. The bond for the attachment is also in the handwriting of Maj. Robinson, signed by Benjamin H. Smith, Isaac Cohen, for H. Cohen, and Harris Cohen, and it was approved — me on the 4th day of Aug., 1876.

The open account exhibited with the complaint is in the handwriting of Maj. Robinson, and signed by Benjamin H. Smith.

938 I will make copies of all the above-mentioned papers and make them exhibits to this my deposition.

(EXHIBIT A.)

I have examined the original papers in the case of Messers. Jury & Gillis against William H. Todd, in which judgment was rendered in the Chicot circuit court in favor of the plaintiffs, and find the name of B. H. Smith signed to the bond to release the cotton, and so forth, attached in said suit. I have seen him write often; am familiar with his handwriting, and recognize the said name as the genuine signature of Benjamin H. Smith, the defendant in this suit, —the papers in the suit above referred to and on file as exhibits to the depositions taken in this case.

GEORGE T. WILKINSON.

Complaint at Law.

Chicot Circuit Court. January Term, 1887.

BENJAMIN H. SMITH, Plaintiff,

against

WILLIAM H. TODD, Defendant.

The plaintiff, Benjamin H. Smith, states that the defendant, William H. Todd, is indebted to him in the sum of eight thousand
939 dollars for labor performed by the plaintiff for the defendant, particulars of which are set out in an account filed herewith and made part of this complaint, not part of which said sum has been paid. Wherefor- plaintiff prays judgment for eight thousand dollars and for other relief.

JAMES F. ROBINSON,
Att'y for Plaintiff.

STATE OF ARKANSAS, } *sct:*
County of Chicot, }

The plaintiff, Benjamin H. Smith, says that he believes the statement- of the foregoing complaint are true.

BENJ. H. SMITH.

Subscribed and sworn to before me this 4th day of August, 1876.
H. W. GRAVES, *Clerk,*
Per GEO. T. WILKINSON, *D. C.*

Affidavit.

Chicot Circuit Court.

BENJAMIN H. SMITH, Plaintiff,

against

WILLIAM H. TODD, Defendant.

The plaintiff, Benjamin H. Smith, states that the claim in this action against the defendant, William H. Todd, is for
940 money due for labor performed by plaintiff for defendant and that it is a just claim; that he ought, as he believes, to recover thereon eight thousand dollars, and that said defendant, William H. Todd, is a non-resident of the State of Arkansas.

BENJ. H. SMITH.

Subscribed and sworn to before me this 4th day of August, 1876.
H. W. GRAVES, *Clerk,*
Per W. T. WILKINSON, *D. C.*

Bond.

Chicot Circuit Court.

BENJAMIN H. SMITH, Plaintiff,
against
WILLIAM H. TODD, Defendant.

We undertake that the plaintiff, Benjamin H. Smith, shall pay to the defendant, William H. Todd, all damages which he may sustain by reason of this action if the order therefor is wrongfully obtained.
August 4th, 1876.

BENJ. H. SMITH.
ISAAC COHEN,
Per A. COHEN.
HARRIS COHEN.

Attest: H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

941 *Account.*

Wm. H. Todd to Benj. H. Smith, Dr.

1876, Aug. 4. To amount due for services rendered in the supervision and management of said Todd's Yellow Bayou plantation and his half interest, in the Bellevue plantation from January, 1869, to date, at $1,000 per annum & interest ---------- $8,000

BENJ. H. SMITH.

We, the jury, find for the pl'ff and assess his damages at 8,000.00.
S. N. CAUGHEY, *Foreman.*

Filed order of attachment & summons issued this the 4th day of August, 1876.

H. W. GRAVES, *Clerk*,
By W. T. WILKINSON, *D. C.*

Exhibit "A" to deposition of George T. Wilkinson opened & published by order of court Feb'y 5, 1884.

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

942 EXHIBIT "A."

STATE OF ARKANSAS, *Chicot County:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are commanded that of the estate of Wm. H. Todd you cause to be made the sum of three hundred and eighteen dollars and seventy-four cents, which McMurray, late in our Chicot circuit court, recovered against him for debt, with interest at 10% per annum thereon from the 22nd day of July, 1876, until paid; also

the sum of — dollars — cents which was adjudged to the said —— —— for his costs in the suit expended, and that you have said sums of money in sixty days to render to the said McMurray & Co. his debt, interest, and costs aforesaid.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 10th day of August, 1876.

H. W. GRAVES, *Clerk.*

Endorsed by clerk, viz: McMurray & Co. *vs.* W. H. Todd. To sheriff of Chicot county. Issued August 10th, 1876. Made returnable in sixty days. Recorded, H, page 98. Debt, $318.74. Int. from July 22nd, 1876, at 10 %. Clerk's costs, $11.40.

943 This execution came to my hands on Friday, August 11th, 1876, at 11 a. m.

S. H. HOLLAND, *Sheriff.*

I have, this 28th day of August, 1876, levied on all the interest of Wm. H. Todd in and to the following-described lands, to wit, S. E. ¼ sec. 6, N. E. ¼ sec. 7, S. E. ¼ sec. 7, in township 15 S., R. 1 west.

S. H. HOLLAND, *Sheriff.*

On 28th September, 1876, I sold the interest of Wm. H. Todd in the before-mentioned lands levied *in* on 28th August for the total price and sum of $358.43 to B. H. Smith, who gave his bond, with lien reserved according to law, for the said purchase-money, and this execution is hereby so returned.

S. H. HOLLAND, *Sheriff.*

Certificate.

McMURRAY & Co. *vs.* WM. H. TODD.

—, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that by virtue of an exception issued and to me directed by the clerk of the Chicot circuit court, dated August 10th, 1876, in favor of McMurray & Co. *vs.* Wm. H. Todd, I did, on the 28th day of August, 1876, levy upon *upon* the following-described lands
944 situated in Chicot county, to wit, S. E. ¼ sec. 6, N. E. ¼ sec. 7, S. E. ¼ sec. 7, township 15 S., R. 1 W., and that I advertised said lands for sale according to law, and that on the 28th day of September, 1876, between the hours for judicial sales, at the front door of the court-house, in the town of Lake Village, I did offer said lands for sale on a credit of three months, and that at said sale B. H. Smith, being the highest bidder, became the purchaser of all the right, title, and interest of Wm. H. Todd in and to the said lands, in the parcels and at the respective prices below mentioned, to wit:

N. E. ¼, S. E. ¼, sec. 6, T. 15 S., R. 1 W., 40 acres						--------	$29 87
N. W. ¼, S. E. ¼,	"	"	"	"	"	--------	29 87
S. W. ¼, S. E. ¼,	"	"	"	"	"	--------	29 87
S. E. ¼, S. E. ¼,	"	"	"	"	"	--------	29 87
N. E. ¼, N. E. ¼,	"	"	"	"	"	--------	29 87
N. W. ¼, N. E ¼,	"	"	"	"	"	--------	29 87

S. W. ¼, N. E. ¼,	sec. 6,	T. 15 S.,	R. 1 W.,	40 acres	----------	29	87
S. E. ¼, N. E. ¼,	"	"	"	"	"	29	87
N. E. ¼, S. E. ¼,	"	"	"	"	"	29	87
N. W. ¼, S. E. ¼,	"	"	"	"	"	29	87
S. W. ¼, S. E. ¼,	"	"	"	"	"	29	87
S. E. ¼, S. E. ¼,	"	"	"	"	"	29	87

And that three months thereafter, to wit, on the 28th day of December, 1876, the above-mentioned total amount of three
945 hundred and fifty-eight $\frac{43}{100}$ ($358.43) dollars was paid by B. H. Smith to me, as such sheriff, as purchase-money for said interest in said lands, the receipt whereof is hereby acknowledged, and I do hereby so certify.

Given under my hand this 28th day of Dec., 1876.

S. H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

I, H. W. Graves, clerk of the circuit court and *ex-officio* recorder of the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 29th day of July, 1877, at — o'clock, and the same, together with the certificate of acknowledgment thereto, is duly recorded *is duly recorded* in Record Book —, series —, page 733.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 24th day of April, 1877.

H. W. GRAVES, *Clerk.*

Endorsed: Filed for record Jan'y 27th, 1877, at 10 o'clock, a. m. H. W. Graves, clerk, by Geo. T. Wilkinson, D. C.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex-officio*
946 recorder for the county and State aforesaid, do hereby certify that the preceding five pages contain true and correct copy-s of the execution issued out of this court on the 10th day of August, 1876, in a cause wherein James McMurray was plaintiff and Wm. H. Todd was defendant, together with the sheriff's return thereon and the certificate of purchase executed by said sheriff under the sale made under said execution, as the same appears of file and record in my office.

Witness my hand and the seal of said court, hereto affixed this the 26th day of November, A. D. 1879.

GEO. T. WILKINSON,
Clerk C't C't Chicot Co., Ark's.

Endorsed as follows: Exhibit "A" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk. Filed Feb. 9, 1884. Ralph L. Goodrich, clerk.

947 EXHIBIT B.

STATE OF ARKANSAS, *Chicot County:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are commanded that of the estate of William H. Todd you cause to be made the sum of one hundred and eighteen dollars and ninety-one cents, which McMurray & Co. late in our Chicot circuit court recovered against him for debts, with interest thereon from the 21st day of July, 1876, until paid; also the sum of — dollars — cents, which was adjudged to the said —— —— for his costs in this suit expended, and that you have said sums of money in sixty days to render to the said McMurray & Co. his interest, debt, and costs aforesaid.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 10th day of August, 1876.

H. W. GRAVES, *Clerk.*

Endorsed by clerk: J. M. McMurray & Co. *vs* W. H. Todd. To sheriff of Chicot county. Issued Aug. 10th, 1876, made returnable in sixty days. Rec. H, page 93. Debt, $118.91; int. from July
948 21st, 1876, at 6%, $1.35 clerk's cost, $—; sheriff's costs, $ —.

Sheriff's Return on the Foregoing Execution.

This execution came to my hand on Friday, Aug. 11th, 1876, at 11 a. m.

S. H. HOLLAND, *Sheriff.*

I have this 28th day of August, 1876, levied on all the right, title, and interest of Wm. H. Todd — and to the foregoing described lands, to wit, N. E. ¼ sec. 6, town. 15 S., R. 1 west.

S. H. HOLLAND.

On this 28th day of September, 1876, I sold the interest of Wm. H. Todd in and to the lands levied on under this execution to B. H. Smith for the total price and sum of $139.21, who has given his bond for said purchase-money, as provided by law, and I do hereby so return.

S. H. HOLLAND, *Sheriff.*

Levy	75c.
Mileage	60
Posting notices	75
Mileage on same	3 70
2% on $120	2 40
Return	75
	$8 95

Execution Certificate.

McMURRAY & Co. *v.* WM. H. TODD.

I, S. H. Holland, sheriff of Chicot —, do hereby certify that
949 by virtue of an execution issued, to me directed by the clerk of the Chicot circuit court, dated August 10th, 1876, in favor of McMurray & Co. against Wm. H. Todd, I did, on the 28th day of August, 1876, levy upon the following-described lands, situate in said Chicot county and State of Arkansas, to wit, N. E. ¼ sec. 6, T. 15 S., R. 1 W., and that I advertised said lands for sale according to law, and that on the 28th day of September, 1876, between the hours for judicial sales, at the front door of the court-house, in the town of Lake Village, I did offer said lands for sale on a credit of three months, and that at said sale Benjamin H. Smith, being the highest therefor, became the purchaser *to* all the right, title, and interest of William H. Todd in and to said lands in the parcels and at the respective prices as below mentioned, to wit:

N. E. ¼, N. E. ¼, sec.	6,	T.	15	S.,	R.	1 W.,	40 acres ---------- $35 00
N. W. ¼, N. E. ¼	"	"	"		40	"	---------- 35 00
S. E. ¼, N. E. ¼	"	"	"		40	"	---------- 35 00
S. W. ¼, N. E. ¼	"	"	"		40	"	---------- 35 00

And that three months thereafter, to wit, on the 28th day of December, 1876, the above-mentioned total amount, one hun-
950 dred and forty ($140.00) dollars, was paid by the said B. H. Smith to me, as said sheriff, as purchase-money of said interest in said lands, the receipt whereof is hereby acknowledged, and I do hereby so certify.

Given under my hand as such sheriff this 28th Dec., 1876.

S. H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

I, H. W. Graves, clerk of the circuit court and *ex officio* recorder of the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 27th day of Jan'y, 1877, at — o'clock, and the same, together with the certificate of acknowledgment thereto, is duly recorded in Record Book T, page 734.

In testimony whereof I have hereunto set my hand and affixed the seal of this county this 24th day of April, 1877.

H. W. GRAVES, *Clerk.*

Endorsed: Filed for record Jan'y 27th, 1877, at 10 o'clock. H. W. Graves, clerk, by Geo. T. Wilkerson, D. C.

STATE OF ARKANSAS, *County of Chicot:*

951 I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the preceding four pages contain a true and correct copy

of the original execution issued at the time and in the cause therein named, together with the sheriff's return thereon, and the certificate of purchase executed by the sheriff for said — to the purchaser of the property sold under said execution, as the said execution, sheriff's return, and certificate of purchase appear of file and record in my office.

Witness my hand and official seal, hereto affixed this the 26th day of November, A. D. 1879.

[SEAL.] GEO. T. WILKINSON,
Clerk C't C't.

Endorsed: Exhibit "B" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk. Filed Feb. 9, 1884. Ralph L. Goodrich, clerk.

952 EXHIBIT C.

STATE OF ARKANSAS, *County of Chicot:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are commanded that of the estates of Eveline E. Bolisar and William H. Todd you cause to be made the sum of nine thousand two hundred and sixty-one dollars and ten cents, which they owe to Wm. P. Halliday on a sale bond executed by them on the 6th day of April, 1876, until paid; also the sum of thirty-five dollars for costs, which bond is on file in the office of the clerk of the Chicot circuit court, and that you have said sum of money within 60 days to render to the said William P. Halliday his debt, interest, and costs aforesaid.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 11th day of July, 1876.

[SEAL.] H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

Endorsed thereon: N. 45. Wm. P. Halliday *vs.* Eveline E. Bolisar, principal, and William H. Todd, surety. Ex. on sale bond. Original judgement. May term, 1873. Ch'c'y. Rec. D, page 77.

953 To sheriff of Chicot county, returnable in 60 days from July 11th, 1876. Debt, $9,261.10; int. from April 6th, 1876, 309.00; costs, 35.00; this execution, &c., 1.00; Co. tax, 50c.; sheriff's costs, this ex., 24.85; 2% com. on $9,070, 180.40=$9,822.85. No surety of any kind is to be taken in this case. Attest: H. W. Graves, clerk, by Geo. T. Wilkinson, D. C.

Came to hand at 10 o'clock a. m., July 15, 1876—S. H. Holland, sheriff, by T. E. Willing, D. S.—and on the same day levied upon the following-described lands and advertised them for sale on the 14th of August, 1876, to wit: S. W. ¼ sec. 9, S. E. ¼ sec. 10, E. fr'l ½ of N. E. ¼ sec. 10, N. fr'l ½ sec. 11, S. ½ sec. 11, fr. sec. 12, sec. 13, sec. 14, S. ½ sec. 15, N. E. ¼ sec. 17, S. E. ¼ sec. 21, S. ½ sec. 22, E. ½ N. E. ¼ sec. 22, sec. 23, E. ½ N. W. ¼ sec. 24, N. ½ sec. 26, S. W. ¼ sec. 26, and sec. 29, all in township 15 S., R. 2 west, and on the said 14th

day of August, 1876, between the hours for judicial sales, I did offer and sell to W. P. Halliday all the right, title, and interest of said William H. Todd and Eveline E. Bolisar in and to the before-mentioned lands for the total price and sum of $9,070, and executed to him a certificate of purchase for same this Aug. 14, 1876.

S. H. HOLLAND, *Sheriff.*

Sheriff's fees: This execution levy, 75c.; posting notices,
954 75c.; printing fees, $10.00; —, $22.75; 2% com. on $9,070, $181.40; making certificate, 50c.=$204.65.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the Chicot circuit court in and for the county and State aforesaid, do hereby certify that the preceding 2 pages contain a true and correct copy of an execution issued out of this *cause* on the 11th day of July, 1876, on a sale bond executed by Mrs. E. E. Bolisar, as principal, and Wm. H. Todd, as surety thereon, and the sheriff's return thereon, as the same appears of file in my office.

Witness my hand and official seal, hereto affixed this 26th day of November, A. D., 1879.

GEO. T. WILKINSON.

Endorsed as follows: Exhibit "C" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk. Filed Feb. 9, 1884. Ralph L. Goodrich, clerk.

EXHIBIT D.

955 STATE OF ARKANSAS, *Chicot County:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are commanded that of the estates of Eveline E. Bolisar & Wm. H. Todd you cause to be made the sum of seven hundred and fifty-two dollars and eighty-five cents, which they owe to Wm. P. Halliday as a balance on a sale bond executed by them on the 6th day of April, 1876, with 10 % interest thereon from the 14th day of August, 1876, until paid; also the sum of — dollars for costs, which bond is on file in the office of the clerk of the Chicot circuit court, and that you have said sum of money within sixty days to render to the said Wm. P. Halliday his debt, interest, and costs aforesaid.

In witness whereof I have hereto set my hand and affixed the seal of said court this 19th day of August, 1876.

H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

Endorsed by clerk: No. 52. Wm. P. Halliday *vs.* Eveline E.
Bolisar, principal, & Wm. H. Todd, sureties. Decree. May
956 term, 1873. Rec. D, pp. 77. To sheriff of Chicot county, returnable in 60 days' from Aug. 19, '78. Bal. debt, $752,85; int., 10 %, from Aug. 14, '76, $930; this ex. & Co. tax, $1.25; sheriff's fee, $33.31. No stay or execution of any kind will be taken in this case. Attest: H. W. Graves, clerk, by Geo. T. Wilkinson, D. C.

Sheriff's Return.

This execution came to my hands on 19th August, at 5 p. m.
S. H. HOLLAND, *Sheriff.*

And I have, this 28th day of August, 1876, levied on the interest of Wm. H. Todd in the following-described lands, to wit:

S. ½ N. W. ¼ sec. 6,
S. W. ¼ " 6,
N. W. ¼ " 7,
S. W. ¼ " 7, all in township 15 S., R. 1 west.
S. H. HOLLAND.

And I did, on the 28th day of September, 1876, offer said lands for sale according to law, and B. H. Smith became the purchaser at the price and sum of $796.21, and this execution satisfied.

NOTE OF CLERK.—This receipt attached to the foregoing execution, viz:

LAW OFFICE OF D. H. REYNOLDS,
LAKE VILLAGE, ARK., *Sept.* 30, 1876.

957 Received of S. H. Holland, sheriff, &c., the — of Benj. H. Smith on First National Bank of Memphis, Tenn., in his favor for $796.71, being amount of execution in favor of Halliday *vs.* Todd, &c., on which sale was had on Sept. 28th, 1876, say $762.15 debt and 34.56 costs, &c., and upon its payment to be satisfaction of said execution.

D. H. REYNOLDS.

Endorsed: The draft has been paid Oct. 14th, 1876. D. H. Reynolds.

Certificate of Purchase under Above Execution.

WM. P. HALLIDAY *vs.* E. E. BOLISAR & W. H. Todd.

Alias execution, certificate.

I, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that by virtue of an *alias* execution on sale bond issued and to me directed by the clerk of the Chicot circuit court, dated August 9th, 1876, in favor of Wm. P. Halliday against Eveline E. Bolisar, as principal, and Wm. H. Todd, surety, I did, on the 28th day of August, 1876, levy upon the following-described lands situate in Chicot county, Arkansas, to wit: S. ½ N. W. ¼ sec. 6, S. W. ¼ sec. 6,
N. W. ¼ sec. 7, S. W. ¼ sec. 7, T. 15 S., R. 1 W., and that I
958 advertised said lands for sale according to law, and that on the 28th day of September, 1876, between the hours for judicial sales, at the front door of the court-house in the town of Lake Village, I did offer said lands for sale for cash in hand, and that at said sale B. H. Smith, being the highest bidder, became the purchaser of all the right, title, and interest of Wm. H. Todd in and

to said lands in the parcels and at the respective prices below mentioned, viz:

S. E. ¼ N. W. ¼	sec. 6,	T. 15	S.,	R. 1	W.,	40 acres	$56 90
S. W. ¼ N. W. ¼	"	"	"	"	"	"	56 90
N. E. ¼ S. W. ¼	"	"	"	"	"	"	56 90
N. W. ¼ S. W. ¼	"	"	"	"	"	"	56 90
S. W. ¼ S. W. ¼	"	"	"	"	"	"	56 90
S. E. ¼ S. W. ¼	"	"	"	"	"	"	56 90
N. E. ¼ N. W. ¼	"	"	"	"	"	"	56 90
N. W. ¼ N. W. ¼	"	"	"	"	"	"	56 90
S. W. ¼ N. W. ¼	"	"	"	"	"	"	56 90
S. E. ¼ N. W. ¼	"	"	"	"	"	"	56 90
N. E. ¼ S. W. ¼	"	"	"	"	"	"	56 90
N. W. ¼ S. W. ¼	"	"	"	"	"	"	56 90
S. W. ¼ S. W. ¼	"	"	"	"	"	"	56 90
S. E. ¼ S. W. ¼	"	"	"	"	"	"	56 90

And that said B. H. Smith has paid to me as such sheriff
959 the above-mentioned total amount of seven hundred and ninety-six $\frac{71}{100}$ ($796.71) dollars as purchase-money for said interest on said lands, and I do hereby so certify.

S. H. HOLLAND, *Sheriff.*

Certificate of purchase endorsed:

STATE OF ARKANSAS, *County of Chicot:*

Filed for record Jan'y 27th, 1877, at 10 o'clock a. m.

H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the foregoing four pages and the above writing on this page contain a true and correct transcript of an *alias* execution issued out of this court on the 19th day of August, 1876, on a sales bond executed by Mrs. E. E. Bolisar, as principal, and Wm. H. Todd, as surety, thereon, and the sheriff's return thereon, together with the certificate of purchase executed at the sale made under said execution, as the same appear- of file and record in my office.

960 Witness my hand and official seal, hereto affixed this the 26th day of November, A. D. 1879.

GEO. T. WILKINSON, *Clerk.*

Endorsed: Exhibit "D" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk. Filed Feb. 9, 1884. Ralph L. Goodrich, clerk.

961 *Ex. E to Dep. Geo. T. Wilkerson.*

Chicot Circuit Court. January Term, 1877.

BENJAMIN H. SMITH, Plaintiff,
against
WILLIAM H. TODD, Defendent.

Complaint at law.

The plaintiff, Benjamin H. Smith, states that the defendant, William H. Todd, is indebted to him in the sum of *sum of* eight thousand dollars for labor performed by the plaintiff for the defendant, particulars of which are set out in an account filed herewith and made part of this complaint, no part of which said sum has been paid; whereupon plaintiff prays judgment for eight thousand dollars and for other relief.

JAMES F. ROBINSON,
Att'y for Plaintiff.

STATE OF ARKANSAS, *County of Chicot,* } *sct:*

The plaintiff, Benjamin H. Smith, says that he believes the statements in the foregoing complaint are true.

BENJ. H. SMITH.

Subscribed and sworn to before me this 4th day of August, 1876.
H. W. GRAVES, *Clerk,*
962 Per GEO. T. WILKINSON, *D. C.*

STATE OF ARKANSAS, *County of Chicot:*

Affidavit.

Chicot Circuit Court.

BENJAMIN H. SMITH, Plaintiff,
against
WILLIAM H. TODD, Defendant.

The plaintiff, Benjamin H. Smith, states that the claim in this action against the defendant, William H. Todd, is for money due for labor performed by plaintiff for defendant, and that it is a just claim; that he ought, as he believes, to recover thereon eight thousand dollars, and that said defendant, William H. Todd, is a non-resident of the State of Arkansas.

BENJ. H. SMITH.

Subscribed and sworn to before me this 4th day of August, 1876.
H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

Bond.

Chicot Circuit Court.

BENJAMIN H. SMITH, Plaintiff,
against
WILLIAM H. TODD, Defendant.

963 We undertake that the plaintiff, Benjamin H. Smith, shall pay to the defendant, William H. Todd, all damages which he may sustain by reason of this action if the order therefor is wrongfully obtained.

BENJ. H. SMITH.
ISAAC COHEN,
Pr. H. COHEN.
HARRIS COHEN.

Attest: H. W. GRAVES, *Clerk*,
By GEO. T. WILKERSON, *D. C.*

Account.

Wm. H. Todd to Benj. H. Smith, Dr.

1876, Aug. 4. To amount due for services rendered in the supervision and management of said Todd's Yellow Bayou plantation and his half interest in the Bellevue plantation from January, 1869, to date, at $1,000 per annum and interest ---------- $8,000 00

BENJ. H. SMITH.

Endorsed by clerk: "Filed and order of attachment & summons issued this the 4th day of August, 1876. H. W. Graves, clerk, by Geo. T. Wilkinson, D. C."

964 *Order of Attachment.*

STATE OF ARKANSAS, *County of Chicot:*

The State of Arkansas to the sheriff of Chicot county:

You are hereby commanded to attach William H. Todd by all and singular his goods and chattels, lands and tenements, credits and effects, not exempt from execution, or so much thereof as shall be sufficient to secure the sum of eight thousand dollars, the debt as sworn to, with interest and cost of suit, in whose hands or possession the same may be found in your county; and you are also commanded to summon the said William H. Todd to be and appear before the judge of our circuit court, at the court-house in the county of Chicot, on the first day of our next January term, it being the second Monday in January next after the date hereof, then and there to answer the complaint of the plaintiff, Benj. H. Smith.

In testimony whereof I hereunto set my hand and affixed
965 the seal of said court on this 4th day of August, 1876.

H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

Sheriff's Return.

This writ came to my hands on 5th August, 1876, at 4 p. m., and I have, this 8th day of August, same year, served the same by attaching the following personal property of the within-named William H. Todd on Yellow Bayou plantation, in Chicot county, Arkansas, to wit: ¼ interest in cotton raised by Henry Turner, about 5 bales, more or less, in gin; ¼ int. cotton of William Turner, 4 bales, more or less, in pen; ¼ int. in Bruden Brown's, 5 b., more or less (in pen); ½ int. in James Webb's cotton, 4 b., more or less, in pens; ½ int. in Sam. Williams', 2 b., more or less, in pens; ½ int. in A. Cottonham's cotton, 2 b., more or less, in pens; ½ interest in Clay Cottonham's cotton, 3 b., more or less, in pens; also the following interest which said Todd has in the now growing crop on
966 Yellow Bayou, cultivated by the persons and squads respectively mentioned, to wit:

Jackson Bowie, ½ int. 6 b., more or less.
Lloyd Warren, per E. Mole, ½ int. 5 b., more or less.
Clarissa Thurman, ½ int. 2 b., more or less.

Leonard Tripp, ½	"	3	"	"
Bruden Brown, ¼	"	4	"	"
Billy Robinson, ¼	"	6	"	"
Cy. Brown, ¼	"	4	"	"
Chas. White, ½	"	2	"	"
Wm. Turner,	"	4	"	"
Jack Newton's squad,		4	"	"
John Turner's "		4	"	"
Clay Cottonham's "		11	"	"
Henry Turner's "		12	"	"
Jas. Webb, "		5	"	"
Sam. Tripps, "		6	"	"
Sam. Wilson's, "		4	"	"
Lewis Banks, "		6	"	"
Cetin Brown crops,		4	"	"

Also the following mentioned and described stock, to wit:
One brown horse mule, named Mack.
" " " " " Dan.
" black mare, " " Emma.
" sorrel " " " Celia.
" grizzle horse *horse*, " Pete.
" black mare mule, " Daise.
" bay " " " David.
One brown horse mule, named John.
967 One brown jack mule, named Jack.
One cream-colored horse mule, named Burke.
One bay colored horse mule, named Glass.
" black " " " George.
" roan mare & mule, " Mary.
" sor-el pony.
" stud colt (white).
Two white cows.

One, 1, white calf.
" spotted "
" yearling.
" spotted cow.
2 sheep.
3 farm wagons.
1 carriage.
1 cask.
1 sett carriage harness.
1 gin stand.
12 sets plow gear.
1 ladies' saddle.
7 plows.
8 side lines.
2 sweeps.
1 p'r cotton balances and 1 gin stand, and I have left the same in charge of Mr. E. Mole, who has this day been appointed by me as custodian at the request of the plaintiff, B. H. Smith.

S. H. HOLLAND, *Sheriff.*

968 I have also, on this 19th Dec., attached the following-described lands by going upon the same and leaving a copy of attachment with B. H. Smith, in whose possession I found the same. Said lands are described as follows, to wit:

Und. ½ sec. 5, und. ½ W. ½ sec. 8, und. ½ W. ½ S. E. ¼ sec. 8, und. ½ S. ½ S. ½ sec. 21, und. ½ (diagonal) S. ½ N ½ S. ½ sec. 4, all in town. 15 S., R. 1 W.; also all fr'l sec. 12, E. of W. bank of Yellow Bayou.

S. H. HOLLAND, *Sheriff.*

At the July term, 1877, of the circuit court of Chicot county, Arkansas, on the 25th day of July, 1877, a day of said term of said court, among others the following proceedings were had, to wit:

B. H. SMITH *against* WM. H. TODD.

On this day comes J. R. Martin, att'y, and enters the appearance of the defendant, and leave is given him to answer, and the defendant files his answer.

969 *Defendant's Answer.*

Chicot Circuit Court.

BEN. H. SMITH *vs.* W. H. TODD.

Answer.

Comes the defendant, by attorney, and denies each and every allegation in plaintiff's complaint herein, as well as each and every item of his account sued on herein.

J. R. MARTIN,
For Defendant.

Filed in open court July 25th, 1877.

H. W. GRAVES, *Cl'k.*

At the July term, 1877, of the circuit court of Chicot county, Arkansas, on the 25th day of July, 1877, a day of said term of said court, among others the following proceedings were had, to wit:

Judgment.

BENJ. H. SMITH *against* WILLIAM H. TODD.

On this day, this cause coming on to be heard, both parties being present, by their attorneys, and announcing themselves ready
970 for trial of this case; and thereupon came a jury of S. N. Caughey and eleven others, good and lawful jurors, who were sworn to well and truly try this case and a true verdict render according to the evidence and law in the case; and, after hearing the evidence and instructions of the court, returned into court with the following verdict indorsed upon the complaint:

"We, the jury, find for the plaintiff, and assess his — at $8,000.00.
S. N. CAUGHEY, *Foreman.*"

It is, therefore, ordered and adjudged & considered by the court that the plaintiff, B. H. Smith, have and recover of and from the defendant, Wm. H. Todd, the sum of eight thousand dollars, with interest from this date, and all cost in this suit; and it further appearing that this is a suit by attachment, and that the writ of attachment herein was, on the 8th day of August, 1876, duly and properly levied upon the following property: Thirteen head of mules, two horses, six head of cattle, two head of sheep, and a lot of
971 farming utensils, and all particularly described in said writ; and also, on the 19th day of December, 1876, that said writ was duly levied upon the following-described real estate: Und. ½ sec. 5, und. ½ W. ½ sec. 8, und. ½ W. ½ S. E. ¼ sec. 8, und. ½ S. ½ S. ½ sec. 4, und. ½ diagonal S. ½ N. ½ S. ½ sec. 4, all in township 15 S., R. 1 W.; also all fr'l sec. 12, E. of W. bank of Yellow Bayou, the property of defendant herein, and is a lien upon the same from the dates of said levy—

It is, therefore, ordered that the said property, or so much thereof as is necessary, be sold to satisfy the judgement herein by the sheriff, upon his first giving twenty days' notice of the time, place, and terms of sale, in accordance with law.

At the January term, 1878, of the circuit court of Chicot county, Arkansas, on the 31st day of January, 1878, a day of said term of said court, among others the following proceedings were had, viz:

972 BENJ. H. SMITH
vs. } 957.
WILLIAM H. TODD.

On this day came the plaintiff, by his attorney, as well as the defendant, by his attorney, and, it appearing to the court that the time and place of sale of the property attached in this suit had not been entered up at the last term of this court in the judgment

as rendered, it is, on motion of plaintiff, considered and adjudged that said judgment be made to speak the truth now as for them by fixing the place of sale of the attached property at the dwelling-house on Yellow Bayou plantation and the time the first Monday in April, 1878, the sheriff giving twenty days' notice of said sale, as required by law.

At the July term, 1878, of the circuit court of Chicot county, Arks., on the 15th day of July, 1878, a day of said term of
973 *of* said court, the following among other proceedings were had, viz:

B. H. SMITH *vs.* W. H. TODD.

On this day comes S. H. Holland, sheriff, and files his report of the sale of the property herein attached and ordered to be sold by the court at a former term, and it appearing to the court that at the time and place and on the terms set forth in said order he made sale of the lands herein attached, to wit:

An und. ½ sec. 5, und. ½ W. ½ sec. 8, und. ½ W. ½ S. E. ¼ sec. 8, und. ½ S. ½ S. ½ sec. 4, und. ½ (diag.) S. ½ of N. ½ sec. 4, all in township 15 S., R. 1 W.; also all of fr'l sec. 12, E. of W. bank of Yellow Bayou, as by the return upon said writ of attachment appears, and of the personal property herein attached, to wit:

One	brown horse mule,	named	Mack.
One	mule,	"	Dan.
One	"	"	Emma.
	One mule,	"	Celia.
974	One "	"	Pete.
	" "	"	Dawie.
One	mule,	"	Dawic.
"	"	"	John.
"	"	"	Jack.
"	"	"	Burke.

One Glass, one George, and one May, sorrel pony, stud colt, 2 white cows, 1 white calf, 1 spotted calf, 1 yearling, 1 spotted cow, 2 sheep, 3 farm wagons, 1 carriage, 1 cart, 1 set carriage harness, 1 gin-stand, 12 set plow-gears, 7 plows, 8 side lines, 2 sweeps, 1 pair cotton balances, and one gin-stand, and which said property was purchased by B. H. Smith for the respective sums set opposite said property as above, amounting in the aggregate to the sum of $4,055.00; and it appearing further to the court that said sheriff had in all things complied with the order of the court in this cause, it is, therefore, ordered and considered by the court that said sale be in all things approved and confirmed.

975 *Execution & Return.*

STATE OF ARKANSAS, *Chicot County:*

The State of Arkansas to the sheriff of Chicot county:

Whereas Benjamin H. Smith hath heretofore, to wit, on the 4th day of August, A. D. 1876, instituted in the circuit court of Chicot

county, Arkansas, his suit by attachment against Wm. H. Todd, the writ whereof was levied upon certain property and effects of the said Wm. H. Todd, to wit:

One brown horse mule, named Mack.
" " " " " Dan.
" black mare " " Emma.
" sorrel " " " Celia.
" grizzle horse, " " Pete.
" black mare " " Dowe.
" bay mare mule, " Dowil.
" brown horse mule, " John.
" black jack " " Jack.
" cream colored " " Burke.
" bay horse " " Glass.
" black " " " George.
One roan mare mule, named May.

976 One sorrel pony, one stud colt (white), 2 white cows, 1 white calf, 1 spotted calf, 1 yearling, 1 spotted cow, 2 sheep, 3 farm wagons, 1 carriage, 1 cart, 1 set carriage harness, 1 gin stand, 12 set plow-gears, 7 plows, 8 side lines, 2 sweeps, 1 pr. cotton balances, & one gin stand; also an und. ½ of sec. 5, und. ½ W. ½ of sec. 8, and ½ W. ½ S. E. ¼ sec. 8, und. ½ S. ½ S. ½ sec. 4, und. ½ (diag.) S. ½ of N. ½ sec. 4, all in township 15 S., R. 1 west; also all of fr'l sec. 12, E. of W. bank of Yellow Bayou, as by the return upon said writ of attachment appears; and whereas the said Benjamin H. Smith, in our said circuit court, on the 25th day of July, A. D. 1877, recovered judgment for the sum of $8,000.00 for his damages and $— for costs of suit against said Wm. H. Todd, which bears interest at the rate of 6 % per annum from the 25th day of July, 1877, until paid,

977 you are, therefore, hereby commanded that out of the above-described property and effects, or so much thereof as will be necessary, you cause to be made the sum of eight thousand dollars, $8,000.00, recovered as aforesaid, with 6 % per annum interest thereon from the 25th day of July, 1877, until paid, and the further sum of $—, which was adjudged to the said Benjamin H. Smith for his costs in said suit expended, and that you have said sums of money within sixty days to render to the said Benjamin H. Smith for his debt, interest, and costs aforesaid.

In testimony whereof I have hereunto set my hand and the seal of said court affixed this the 22d day of February, A. D. 1878.

[SEAL.] H. W. GRAVES, *Clk*,
By GEO. T. WILKINSON, *D. C.*

Endorsed thereon: No. 59. B. H. Smith *vs.* Wm. H. Todd. Execution to the sheriff of Chicot county. Returnable in 60 days from Feb'y 22d, 1878. Judgment, July term, 1877, c't c't. Rec. "H," 263.

978 Debt, $8,000.00, 6 % int., from July 25th '77. Clerk's costs, $6.05; this ex. & tax, $1.25; sheriff's costs, $—. No stay of execution will be taken in this case. H. W. Graves, cl'k, by Geo. T. Wilkinson, D. C.

By virtue of a *nunc pro tunc* order made at the Jan'y term, 1878, of this court in the within-entitled cause you are hereby authorized and directed to make sale of the attached property herein described and mentioned at the dwelling-house of Wm. H. Todd, on the Yellow Bayou plantation, on the first Monday in April, 1878, first giving (20) twenty days' notice of such sale, as required by law.

Attest: H. W. GRAVES, *Clk*,
By GEO. T. WILKINSON, *D. C.*

Sheriff's Return.

This execution came to my hands on the 23d day of Feb'y, 1878, at 10 a. m.

S. H. HOLLAND, *Sheriff.*

I hereby return that at the time specified in this writ I sold the personal and real property herein mentioned and ordered to
979 be sold, after advertising as herein directed, and that said sale was made in accordance with the within advertisements, and at said sale B. H. Smith was the highest and best bidder therefor, and became the purchaser thereof for the total price and sum of four thousand and fifty-five dollars ($4,055), which sum is by plaintiff ordered placed as a credit hereon, and this writ is hereby so returned.

S. H. HOLLAND, *Sheriff.*

Sheriff's Certificate of Purchase.

Certificate of purchase. Sheriff — Chicot county to Benjamin H. Smith.

BENJAMIN H. SMITH *vs.* WM. H. TODD.

Order of sale.

I, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that on the 22d day of February, 1878, there was
980 issued and to me directed and delivered by the clerk of the Chicot circuit court an order of sale directing me to sell certain lands and personal property heretofore attached by me, as sheriff as aforesaid, in a cause wherein Benjamin H. Smith was plaintiff and William H. Todd was defendant, in which cause the plaintiff recovered judgment against said defendant in our Chicot circuit court for the sum of $8,000.00 and costs, and that in obedience to said order I advertised said lands and personal property in accordance with the directions of said Chicot circuit court, as thereon endorsed by the said clerk, and on the first day of April, 1878, in strict accordance with said order as to time, place, and terms of sale, I did offer the same for sale, and that at said sale Benj. H. Smith, being the highest bidder *for*, became the purchaser of the following-

981 described tracts of land in the quantities and for the respective prices and amounts set opposite each, to wit:

N. E. ¼, N. E. ¼, sec.	5,	town.	15 S.,	R. 1 W.	100 00
N. W. ¼, N. E. ¼,	"	"	"		100 00
S. W. ¼, N. E. ¼,	"	"	"		100 00
S. E. ¼, N. E. ¼,	"	"	"		100 00
N. E. ¼, N. W. ¼,	"	"	"		100 00
N. W. ¼, N. W. ¼,	"	"	"		100 00
S. W. ¼, N. W. ¼,	"	"	"		100 00
S. E. ¼, N. W. ¼,	"	"	"		100 00
N. E. ¼, S. W. ¼,	"	"	"		100 00
N. W. ¼, S. W. ¼,	"	"	"		100 00
S. W. ¼, S. W. ¼,	"	"	"		100 00
S. E. ¼, S. W. ¼,	"	"	"		400 00
N. E. ¼, S. E. ¼,	"	"	"		100 00
N. W. ¼, S. E. ¼,	"	"	"		100 00
S. W. ¼, S. E. ¼,	"	"	"		100 00
S. E. ¼, S. E. ¼,	"	"	"		100 00
S. E. ¼, S. E. ¼,	4	"	"		5 00
S. W. ¼, S. E. ¼,	"	"	"		25 00
S. E. ¼, S. W. ¼,	"	"	"		50 00
S. W. ¼, S. W. ¼,	"	"	"		100 00
N. E. ¼, N. W. ¼,	8	"	"		100 00
N. W. ¼, N. W. ¼,	8	"	"		500 00
S. W. ¼, N. W. ¼,	"	"	"		50 00
S. E. ¼, N. W. ¼,	"	"	"		50 00
N. W. ¼, S. E. ¼,	"	"	"		10 00
S. W. ¼, S. E. ¼,	"	"	"		10 00
N. E. ¼, S. W. ¼,	"	"	"		50 00
982 N. W. ¼, S. W. ¼, sec.	8,	town.	15 S.,	R. 1 W.	50 00
S. W. ¼, S. W. ¼,	"	"	"		50 00
S. E. ¼, S. W. ¼,	"	"	"		50 00
N. E. ¼, N. E. ¼, sec.	12,	E. of W. bank of	Yellow Bayou		50 00
S. E. ¼, N. E. ¼,	"	"	"		50 00
N. E. ¼, S. E. ¼,	"	"	"		50 00
S. E. ¼, S. E. ¼,	"	"	"		25 00

Being a total price and sum of three thousand one hundred and seventy-five dollars, $3,175.00, which amount said plaintiff ordered to be placed as a credit on said judgment in part satisfaction thereof, and I do hereby so certify.

Given under my hand as such sheriff aforesaid this first day of April, A. D. 1878.

S. H. HOLLAND, *Sheriff.*

Filed for record Oct. 7th, 1878.

H. W. GRAVES, *Clk,*
By GEO. T. WILKINSON, *D. C.*

Recorded November 20th, 1878.

GEO. T. WILKINSON, *Clk, &c.*

983 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* recorder within and for the county and State above mentioned, do hereby certify that the preceding — pages contain a true, full, complete, and correct transcript of all proceedings had in the case of Benjamin H. Smith against Wm. H. Todd in said court, together with the execution issued upon the judgment rendered in said cause and the sheriff's return thereon, and also the certificate of purchase executed by S. H. Holland to B. H. Smith at the sale made under said execution, as each and all of said papers and record entries appear of file and record in my office.

Witness my hand and official seal, hereto affixed this the 26th day of November, 1879.

[SEAL.] GEO. T. WILKINSON, *Cl'k.*

984 Endorsed thereon: Exhibit "E" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, cl'k.

[Endorsed:] Benjamin H. Smith — William H. Todd. Transcript.

985 *Exhibit F to the Deposition of Geo. T. Wilkinson.*

Sheriff's deed. S. H. Holland, sheriff, to B. H. Smith.

To all to whom these presents shall come I, Samuel H. Holland, sheriff of Chicot county, Arkansas, send greeting:

Whereas, by virtue of a writ of execution issued out of the circuit court of Chicot county in favor of McMurray & Co. against William H. Todd, to the sheriff aforesaid directed and delivered, commanding him that of the estate of the said William H. Todd in his county he cause to be made certain moneys in said writ of execution specified, as on reference to the said writ now on file in said court will more fully appear; and whereas the said sheriff did, in obedience to the said command, levy on, take, and seize all the estate, right, title, and interest of said William H. Todd in and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the 28th day of September, 1876, sell said premises at public auction, at the front
986 door of the court-house of said county of Chicot, he having first given notice of the time, place, and terms of sale by advertising the same according to law, at which sale the said premises were struck off and sold to Benjamin H. Smith for the sum of one hundred and thirty-nine $\frac{21}{100}$ dollars ($139.21), he, the said Benjamin H. Smith, being the highest bidder therefor, and the purchaser thereof for said sum of $139.21; whereupon the said sheriff, after receiving the said sum of money so bid aforesaid, gave to him such certificate as is by law directed to be given, a copy of which was filed with the said writ of execution; and whereas the twelve months after the date of such certificate and sale have *have* expired without any redemption of the said premises having been made, now, this indenture witnesseth:

That I, Samuel H. Holland, the sheriff as aforesaid, by virtue of said writ and in pursuance of the statute in such cases made and provided, for and in consideration of the sum of money above mentioned,
987 to me in hand paid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said Benjamin H. Smith, his heirs or assigns, all the estate, right, title, and interest of the said Wm. H. Todd whereof he was seized or possessed at the time of the rendition of the judgment or at any time thereafter, in and to all that portion of the lands in said county of Chicot known and described as follows, to wit: North-east quarter of section six (N. E. ¼ sec. 6), township 15 south, range 1 west, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said above mentioned and described premises, with the appurtenances, unto the said Benjamin H. Smith, his heirs and assigns, forever, as fully and absolutely as I, S. H. Holland, the sheriff aforesaid, may, can, or ought to by virtue of the said
988 writ and of the statutes in such cases made and provided grant, bargain, sell, convey, and confirm the same.

In witness whereof I, the said sheriff, have hereunto set my hand and seal on this the 6th day of October, A. D. 1878.

S. H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

Be it remembered that on the 25th day of January, 1878, personally appeared before me S. H. Holland, sheriff of the aforesaid county and State, to me personally well known, and whose genuine signature appears to the above deed, and acknowledged that he executed the same for the uses, purposes, and considerations therein mentioned and set forth.

Witness my hand, as clerk of the circuit court, this 25th day of Jan'y, 1878.

[SEAL.] H. W. GRAVES, *Clerk.*

989 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, circuit — clerk and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the preceding 3 pages and the above writing on this page contain a true and correct copy of a deed executed by the said S. H. Holland as sheriff of Chicot county, Arkansas, to B. H. Smith, as the same appears of record in my office in Record Book of Deeds, &c., "V," pages 795 and 796.

Witness my hand and the seal of said court, hereto affixed this 26th day of Nov., 1879.

[SEAL.] GEO. T. WILKINSON,
Clerk & Recorder.

Endorsed as follows: Exhibit F to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk.

990 *Exhibit "G" to the Deposition of Geo. T. Wilkinson.*

Sheriff's deed. S. H. Holland, sheriff, to Benj. H. Smith.

To all to whom these presents shall come I, Samuel H. Holland, sheriff of Chicot county, Arkansas, send greeting:

Whereas, by virtue of a writ of execution issued out of the circuit court of Chicot county in favor of McMurray & Co. against Wm. H. Todd, to the sheriff aforesaid directed and delivered, commanding him that of the estate of the said Wm. H. Todd in his county he should cause to be made certain money in said writ of execution specified, as on reference to said writ, now on file in said court, will more fully appear; and whereas the said sheriff did, in obedience to the said command, levy on, take, and seize all the estate, right, title, and interest of said William H. Todd in and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the 28th
991 day of September, 1876, sell said premises at public auction at the front door of the court-house of said county of Chicot, he having first giving notice of the time, place, and terms of sale by advertising the same according to law, at which sale the said premises were struck off and sold to Benjamin H. Smith for the sum of three hundred and fifty-eight $\frac{43}{100}$ dollars, $356.43, he, the said Benjamin H. Smith, being the highest bidder therefor and the purchaser thereof for the said sum of three hundred and fifty-eight and forty-three hundredths dollars; whereupon the said sheriff, after receiving from the said purchaser the said sum of money so bid as aforesaid, gave to him such certificate as is by law directed to be given, a copy of which was filed with the said execution writ; and whereas the twelve months after the date of such certificate and sale having expired without any redemption of said premises having been made, now this indenture witnesseth:

992 That I, Samuel H. Holland, the sheriff as aforesaid, by virtue of said writ and in pursuance of the statutes in such cases made and provided, for and in consideration of the sum of money above mentioned, to me in hand paid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said Benjamin H. Smith, his heirs or assigns, all the estate, right, title, and interest of the said Wm. H. Todd whereof he was seized or possessed at the date of the judgment on which said execution was issued, or at any time afterward, in and to all that portion of the lands in said county of Chicot known and described as follows, to wit: Southeast quarter of section 6, the northeast quarter of section 7, and the southeast quarter of section 7, all in township 15 south, range one west, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining:

993 To have and to hold the above mentioned and described premises, with the appurtenanues, unto the said Benjamin H. Smith, his heirs and assigns, forever as fully and absolutely as

I, Samuel H. Holland, the sheriff aforesaid, may, can, or ought to by virtue of the said writ and of the statutes in such cases made and provided grant, bargain, sell, convey, and confirm the same.

In witness whereof I, the said sheriff, have hereunto set my hand and seal on this the 6th day of October, 1877.

SAMUEL H. HOLLAND, *Sheriff.*

STATE OF ARKANSAS, *County of Chicot:*

Be it remembered that on this 25th day of January, 1878, personally appeared before me S. H. Holland, sheriff of Chicot county, to me personally well known, and whose genuine signature appears to the foregoing deed, and acknowledged that he executed the same for the uses, purposes, and considerations therein mentioned & set forth.

994 Witness my hand, as clerk of the circuit court in and for the aforesaid county and State, this 23d Jan'y, 1878.

[SEAL.] H. W. GRAVES, *Clerk.*

Endorsed: "Filed for record Jan'y 25th, 1878, at 4½ p. m. H. W. Graves, clerk, by Geo. T. Wilkinson, D. C."

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, circuit — clerk and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the preceeding 3 pages and the above writing on this page contain a true and correct copy of a deed executed by the said S. H. Holland, as sheriff of Chicot county, Arkansas, to Benjamin H. Smith, as the same appears of record in my office in Record Book of Deeds, &c., "X," pages 793 and 794.

Witness my hand and the seal of said court, hereto affixed this 26th day of November, 1879.

995 GEO. T. WILKINSON,
Clerk & Recorder.

Endorsed as follows: Exhibit "G" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk.

996 *Ex. H to Deposition of Geo. T. Wilkerson.*

Sheriff's deed. S. H. Holland, sheriff, to Benj. H. Smith.

To all to whom these presents shall come, I, Samuel H. Holland, sheriff of Chicot county, Arkansas, send greeting:

Whereas by virtue of a writ of execution issued out of the circuit court of Chicot county in favor of William P. Halliday against Eveline E. Bolivar and Wm. H. Todd, to the sheriff aforesaid directed and delivered, commanding him that of the estate of the — Eveline E. Bolivar and William H. Todd in his county he should cause to be made certain monies in said writ of execution specified, as on reference to said writ now on file in said court will more fully appear; and whereas the said sheriff did, in obedience to the said

command, levy on, take, and seize all the estate, right, title, and interest of said Eveline E. Bolivar and William H. Todd in and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the 28th day of September, 1876, sell said premises at public auction, at the front door of the court-house of said county of Chicot, he having first given notice of the time, place, and terms of
997 sale by advertising the same according to law, at which sale the said premises were struck off and sold to Benjamin H. Smith for the sum of seven hundred and ninety-six and $\frac{71}{100}$ (796.71) dollars, he, the said Benjamin H. Smith, being the highest bidder therefor and the purchaser thereof for said sum of $796.71; whereupon the said sheriff, after receiving from the said purchaser the said sum of money so bid as aforesaid, gave to him such certificate as is by law directed to be given, a copy of which was filed with the said writ of execution; and whereas the twelve months after the date of such certificate and sale have expired without any redemption of the said premises having been made, now this indenture witnesseth:

That, I, Samuel H. Holland, the sheriff as aforesaid, by virtue of said writ and in pursuance of the statutes in such cases made and provided, for and in consideration of the sum of money above mentioned, to me in hand paid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said Benjamin H. Smith, his heirs or assigns, all the estate, right, title,
998 and interest of the said Eveline E. Bolivar & William H. Todd whereof they were seized or possessed at the time of the rendition of the judgment or decree on which said writ of execution was issued, or at — time thereafter, in and to all that portion of the lands in said county of Chicot known and described as follows, to wit:

The south half of the northwest quarter of section six (S. $\frac{1}{2}$ N. W. $\frac{1}{4}$ sec. 6.), the northwest quarter section 7 (N. W. $\frac{1}{4}$ sec. 7), and the southwest quarter of section seven (S. W. $\frac{1}{4}$ sec. 7), all in township 15 south, range 1 west, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the above mentioned and described premises, with the appurtenances, unto the said Benjamin H. Smith, his heirs and assigns, forever, as fully and absolutely as I, Samuel H. Holland, the sheriff aforesaid, may, can, or ought to, by virtue of the said writ and of the statutes in such cases made and provided, grant, bargain, sell, convey, and confirm the same.

In witness whereof I, the said sheriff, have hereunto set my hand and seal on this the 6th day of October, A. D. 1877.

S. H. HOLLAND, *Sheriff.*

999 STATE OF ARKANSAS, *County of Chicot:*

Be it remembered that on this 25th day of January, 1878, personally appeared before me, S. H. Holland, sheriff of Chicot county, to

me well known and whose genuine signature appears above, and acknowledged that he executed the above and foregoing deed of conveyance for the uses, purposes, and considerations therein mentioned and set forth.

Witness my hand, as clerk of the circuit court for said county and State, this 25th January, 1878.

[SEAL.] H. W. GRAVES, *Clerk.*

Filed for record January 25, 1878, at 4½ p. m.

H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, circuit — clerk and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the preceding 3 pages and the above writing on this page contain a
1000 full, true, and correct copy of a deed executed by S. H. Holland, as sheriff of Chicot county, Arkansas, to Benjamin H. Smith as the same appears of record in my office in Record Book of Deeds, &c., "V," pages 791 & 792.

Witness my hand and the seal of said court this 26th day of Nov., 1879.

[SEAL.] GEO. T. WILKINSON, *Clerk, &c.*

Exhibit "H" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk, by W. W. Wilkinson, D. C. Filed Feb. 9th, 1884. Ralph L. Goodrich, clerk.

1001 *Exhibit "I" to the Deposition of Geo. T. Wilkinson.*

An extract from the real estate assessment book for the year 1876, showing the assessed value as per last assessment of sections six & seven, in township 15 S., R. 1 west, Chicot county, Arkansas.

Owner's name.	Part of section.	Section.	Township.	Range.	Acres.	Valuation.
Smith & Todd	N. E. fr. ¼	6	15	1 W.	166 24	1,660
"	S. ½ N. W. ¼	6	"	"	80 00	80
"	S. ½	6	"	"	316 88	1,585
Stuart & Walworth	N. ½ N. W. ¼	6	"	"	84 95	85
Todd & Smith	All	7	"	"	640 70	3,200

I, Geo. T. Wilkinson, circuit — clerk and *ex officio* county clerk in and for the county of Chicot, State of Arkansas, do hereby certify that — above is a true and correct extract from the assessment of real estate for the year 1876, said assessment being the last one made of real estate in this (Chicot) county, as the same appears of file in my office.

Witness my hand and the seal of the county court of Chicot county, Ark's, hereto affixed this the 26 day of Nov., A. D. 1879.

1002 [SEAL.] GEO. T. WILKINSON, *Clerk.*

Endorsed: Exhibit "I" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk.

1003 *Exhibit "J" to the Deposition of Geo. T. Wilkinson.*

At the January term, 1878, of the Chicot circuit court, on the 2d day of February, 1878, a day of said term of said court, among others the following proceedings were had, viz:

ALLEN, NUGENT & CO. *vs.* WM. H. TODD.

This day came plaintiffs, by D. H. Reynolds, their attorney, as also the defendant, by his attorney, and the defendant saying nothing further in bar of plaintiff's demand in this suit, and it appearing to the court that on the 18th day of June, 1877, the order of attachment in this cause had been duly levied upon the following lands situate in said county of Chicot, to wit: The undivided half interest in the south fractional half of the S. ½ sec. 4, S. W. ¼ diagonal ½ of north ½ of S. ½ sec. 4, sec. 5, S. W. ¼ sec. 8, E. ½ N. W. ¼ sec. 8, W. ½ of S. E. ¼ sec 8, and N. E. ¼ sec. 18, all in township 15 S., R. 1 W.; and also in all of W. ½ N. W. ¼ sec. 8, in same township and
1004 range, said lands being part of Bellevue plantation, as the property of said defendant, to satisfy the debt of plaintiffs sued for in this cause; and it further appearing that plaintiffs' demand is based on the ten promissory notes of defendant, executed to one Isaac Cohn on January 23d, 1875, for $1,666.66 each, and bearing ten per cen. per annum interest from their date until paid, payable one and two years, respectively, from that date, and that same had passed to plaintiffs as the legal owners and holders thereof, and that said indebtedness, now amounting to the sum of $4,341.64, is and has been a lien upon the interest of defendant in the lands levied on in this suit from June 18th, 1877, the date of said levy:

It is therefore adjudged by the court that said plaintiff recover of said defendant the sum of four thousand three hundred and forty-one and $\frac{64}{100}$ dollars, the amount of the said notes, including interest thereon, with interest on said sum of — at the rate of ten per
1005 cent. per annum from this date until paid, besides all their costs in this suit expended.

And it is further adjudged by the court that the property attached in this cause be sold at public auction, at the front door of the court-house, in said county of Chicot, on Saturday, the 15th day of June, 1878, and that said sale be upon a credit of three months, and that a lien be retained upon said property to secure such purchase-money, and that plaintiffs have execution hereof.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the writing on the preceding 2 pages contain- a true and correct copy of the judgment in favor — Allen, Nugent & Co. *vs.* Wm. H. Todd as the same appears of record in my office in Circuit Court Record "H," pages 351
1006 & 352.

Witness my hand and seal of the circuit court, hereto affixed this 26th day of Nov., 1879.

[SEAL.] GEO. T. WILKINSON, *Clerk, &c.*

Endorsed: Exhibit I to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk.

1007 *Exhibit "K" to the Deposition of Geo. T. Wilkinson.*

At the January term, 1878, of the Chicot circuit court, on the 2d day of February, 1878, a day of said term of said court, among others the following proceedings were had, viz:

THOS. H. ALLEN *vs.* WM. H. TODD.

This day this cause came up for consideration, and the defendant having been duly summoned to appear in this cause, and being three times solemnly called came not, but makes default, and it appearing to the court that the order of attachment herein had, on October 3d, 1877, been duly levied upon the following lands situated in said county of Chicot, to wit: The undivided half interest in the S. fr'l ½ of S. ½ sec. 4, S. W. diagonal ½ of N. ½ of S. ½ sec. 4, sec. 5, S. W. ¼ sec. 8, E. ½ N. W. ¼ sec. 8, W. ½ of S. E. ¼ sec. 8, and N. E. ¼ sec. 8, all in township 15 S., R. 1 W., and also in all of W. ½ of N. W. ¼ sec. 8, in same township, said lands being part of
1008 Bellevue plantation, as the property of said defendant, to satisfy the debt of plaintiff sued for in this cause; and it further appearing that plaintiff's demand is based on a judgment rendered in the common pleas court No. 2, in the city of Philadelphia, in the State of Pennsylvania, against said defendant, on July 7th, 1877, and in favor of Thomas H. Allen & Co., and that said judgment had been duly assigned and transferred to plaintiff herein, which judgment was for the sum of $1,628.21 debt, and $9.12 costs, and that said indebtedness is a lien upon the interest of defendant in the lands levied on in this suit from October 3d, 1877, the date of said levy:

It is therefore adjudged by the court that said plaintiff recover of said defendant the sum of sixteen hundred and eighty-three and .83 dollars, the amount of said judgment, with interest thereon, with legal interest on said sum from this date until paid, and the fur-
1009 ther sum of nine and $\frac{12}{100}$ dollars, the costs in said original suit, besides all his costs in this suit expended.

And it is further adjudged that the property attached in this cause be sold at public auction, at the front door of the court-house,

in said county of Chicot, on Saturday, the 15th day of June, 1878, and that said sale be upon a credit of three months, and that a lien be retained upon said property to secure such purchase-money, and that plaintiff have execution hereof.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the writing on the preceding 2 pages contains a true and correct copy of the judgment in favor of Thomas H. Allen *vs.* Wm. H. Todd as the same appears of record in my office in Circuit Court Record "H," pages 350 & 351.

1010 Witness my hand and the seal of the circuit court, hereto affixed this 26th day of November, 1879.

[SEAL.] GEO. T. WILKINSON,
Cl'k C't C't, &c.

Endorsed: "Exhibit K" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, cl'k.

1011 *Exhibit L to Deposition of Geo. T. Wilkinson.*

Execution.

STATE OF ARKANSAS, *County of Chicot:*

The State of Arkansas to the sheriff of Chicot county:

You are commanded that of the estate of Wm. H. Todd you cause to be made the sum of six thousand three hundred dollars debt and one hundred and seventeen & $\frac{60}{100}$ damages, which James W. Cooper late in our circuit court recovered against said Wm. H. Todd, with interest at the rate of 6 per centum from the 16th day of January, 1878, until paid; also the sum of — dollars, which was adjudged to the said James W. Cooper for his costs in that suit expended, and that you have said sums of money within sixty days to render to the said James W. Cooper — debt, damages, interest, and costs aforesaid.

In testimony whereof I have hereto set my hand and official seal, at my office, in the town of Lake Village, this 8th day of April, A. D. 1878.

[SEAL.] H. W. GRAVES, *Clerk,*
By GEO. T. WILKINSON, *D. C.*

Endorsed: Execution. No. 72. James W. Cooper, plaintiff, *vs.* Wm. H. Todd, defendant; debt, $6,300.00; damages, $117.60; in-
1012 terest, 6 per cent. from Jan'y 16th, 1878; costs, clerk's, and taxes, $2.10; total, ——. Entered on docket. Ex., page 352. Received 12 m., 8 day of April, 1878. S. H. Holland, sheriff. To sheriff of Chicot county. Returnable in 60 days from April 8, '78. Judgment Jan'y term, '78. C't C't Rec. "H," page 292.

I have, in pursuance of the within execution, levied upon all the right, title, and interest of Wm. H. Todd in and to the following-de-

scribed lands situated in Chicot county, to wit: All section (12) twelve, W. ½ section eleven (11), und. ½ S. ½ sec. (11) eleven, sec. (14) fourteen, S. E. pt. N. E. ¼ sec. ten (10), sec. twenty-three (23), S. W. ¼ section thirteen (13), E. ½ N. W. ¼ sec. (24) twenty-four, E ½ N. E. ¼ sec. 22, E. ½ S. E. ¼ sec. 15, N. ½ and S. E. ¼ sec. 13, S. ½ sec. 22, S. E. ¼ sec. 21, S. W. ¼ sec. 15, W. ½ S. E. ¼ sec. 15, sec. 27, N. ½ and S. W. ¼ sec. 26, N. E. ¼ sec. 17, S. W. ¼ sec. 9, S. E. ¼ sec. 10, all in township 15 S., R. 2 west, and S. ½ S. ½ sec. 4, S. diagonal ½ of N. ½ of S. ½ sec. 4, all sec. (5) five, east half and southwest quarter of section six (6), S. ½ N. W. ¼ section six (6), all section seven (7), W. ½ and W. ½ S. E. ¼ sec. (8) eight, and N. E. ¼ section eighteen (18), in township 15 S., R. one west, and advertised the same to be
1013 sold on Monday, the 27th day of May, 1878; and I further return that on said 27th day of May I offered said lands for sale, and that at said sale James F. Robinson, being the highest bidder for —, became the purchaser of the interest of said Wm. H. Todd in and to the below-mentioned parts of said lands, to wit: Section five (5), S. fr'l ½ of section four (4), E ½ and S. W. ¼ section six (6), S. ½ of N. W. ¼ section six (6), all section seven (7), W. ½ of section eight (8), W. ½ of S. E. ¼ section eight (8), in township 15 S., range 1 west; and W. ½ of section twelve (12), W. ½ of E. ½ of section twelve (12), W. ½ and S. E. ¼ of section eleven (11), S. E. part of N. E. ¼ section ten (10), S. E. ¼ section ten (10), all section thirteen (13), all section fourteen (14), S. ½ section fifteen (15), S. E. ¼ section twenty-one (21), E. ½ N. E. ¼ section twenty-two (22), S ½ section twenty-two (22), all section twenty-three (23), E. ½ N. W. ¼ section twenty-four (24), N. ½ and S. W. ¼ section twenty-six (26), all section twenty-seven (27), N. E. ¼ section seventeen (17), S. W. ¼ section nine (9), in township 15 S., range 2 west, for the total price and sum of fifty-three $\frac{75}{100}$ dollars ($53.75), and the said James F. Robinson
1014 has this day given his bond for said purchase-money; and I further return that on said sale B. H. Smith was the highest bidder for and became the purchaser of the interest of said Todd in and to the following parcels of said lands, to wit, N. E. ¼ of section eighteen (18), township 15 S., range one west, and E. ½ of E. ½ of section twelve (12), township 15 S., R. 2 west, for the total price and sum of seven $\frac{50}{100}$ dollars ($7.50), and has given his bond for said purchase-money, and this execution is hereby so returned; and I further return no other property of the defendant found in our county.

S. H. HOLLAND, *Sheriff.*

Costs:

Levy		75c.
Posting		75c.
Mileage	6	00
Ret. ex.		75c.
2 % com.	1	20
Printer's fee	14	00
Clerk's cost	2	10
	$25	55

1015 *Certificate of Purchase.*

JAS. W. COOPER *vs.* WILLIAM H. TODD.

Exercution.

I, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that on the 8th day of April, 1878, there was issued and to me directed and delivered by the clerk of the Chicot circuit court a certain exercution in favor of James W. Cooper and against Wm. H. Todd, and that by virtue and authority of said exercution I did, on the 9th day of April, 1878, levy upon certain lands situate in said Chicot county, as is shown by the return on said exercution, and that on the 27 day of May, 1878, after having duly advertised said lands according to law, I did offer the same for sale at the time, place, and on the terms mentioned and set forth in said advertisements, and that at said sale Jas. F. Robinson was the highest bidder for and became the purchaser of the right, title, and interest of said Wm. H. Todd in and to the following-described tracts or parcels of said lands for the respective prices set opposite each,
1016 to wit:

N. E. ¼, N. E. ¼, sec. 5, town. 15 S., R. 1 west	1 00
N. W. ¼, N. E. ¼, " " "	50
S. W. ¼, N. E. ¼, " " "	50
S. E. ¼, N. E. ¼, " " "	50
N. E. ¼, N. W. ¼, " " "	50
N. W. ¼, N. W. ¼, " " "	25
S. W. ¼, N. W. ¼, " " "	50
S. E. ¼, N. W. ¼, " " "	25
N. E. ¼, S. W. ¼, " " "	25
N. W. ¼, S. W. ¼, " " "	25
S. W. ¼, S. W. ¼, " " "	25
S. E. ¼, S. W. ¼, " " "	25
N. E. ¼, S. E. ¼, " " "	25
N. W. ¼, S. E. ¼, " " "	25
S. W. ¼, S. E. ¼, " " "	25
S. E. ¼, S. E. ¼, " " "	25
S. diag'l ½, N. ½, S. E. ¼, sec. 4, town. 15 S., R. 1 west	50
N. E. ¼, S. W. ¼, " " "	25
N. W. ¼, S. W. ¼, " " "	50
S. W. ¼, S. W. ¼, " " "	25
S. E. ¼, S. W. ¼, " " "	25
S. W. ¼, S. E. ¼, " " "	25
S. E. ¼, S. E. ¼, " " "	25
N. E. ¼, N. E. ¼, sec. 6, town. 15 S., R. 1 west	25
N. W. ¼, N. E. ¼, " " "	25
S. W. ¼, N. E. ¼, " " "	25
S. E. ¼, N. E. ¼, " " "	25
N. E. ¼, S. E. ¼, sec. 6, town. 15 S., R. 1 west	25
1017 N. W. ¼, S. E. ¼, section 6, town. 15 S., R. 1 west	25

	S. W. ¼, S. E. ¼,	section 6,	town. 15 S.,	R. 1 west	----	25
	S. E. ¼, S. E. ¼,	"	"	"	----	25
	S. E. ½, N. W. ¼,	"	"	"	----	25
	S. W. ¼, N. W. ¼,	"	"	"	----	25
	N. E. ¼, S. W. ¼,	"	"	"	----	25
	N. W. ¼, S. W. ¼,	"	"	"	----	25
	S. W. ¼, S. W. ¼,	"	"	"	----	25
	S. E. ¼, S. W. ¼,	"	"	"	----	25
	N. E. ¼, N. E. ¼,	section 7,	"	"	----	25
	N. W. ¼, N. E. ¼,	"	"	"	----	25
	S. W. ¼, N. E. ¼,	"	"	"	----	25
	S. E. ¼, N. E. ¼,	"	"	"	----	25
	N. E. ¼, N. W. ¼,	"	"	"	----	25
	N. W. ¼, N. W. ¼,	"	"	"	----	25
	S. W. ¼, N. W. ¼,	"	"	"	----	25
	S. E. ¼, N. W. ¼,	"	"	"	----	25
	N. E. ¼, S. E. ¼,	"	"	"	----	25
	N. W. ¼, S. E. ¼,	"	"	"	----	25
	S. W. ¼, S. E. ¼,	"	"	"	----	25
	S. E. ¼, S. E. ¼,	"	"	"	----	25
	N. E. ¼, S. W. ¼,	"	"	"	----	25
	N. W. ¼, S. W. ¼,	"	"	"	----	25
	S. W. ¼, S. W. ¼,	"	"	"	----	25
	S. E. ¼, S. W. ¼,	"	"	"	----	25
	N. E. ¼, N. W. ¼,	8,	"	"	----	25
	N. W. ¼, N. W. ¼,	"	"	"	----	25
	S. W. ¼, N. W. ¼,	"	"	"	----	25
	S. E. ¼, N. W. ¼,	"	"	"	----	25
1018	N. W. ¼, S. E. ¼,	section 8,	town. 15 S.,	R. 1 west	----	25
	S. W. ¼, S. E. ¼,	"	"	"	----	25
	N. E. ¼, S. W. ¼,	"	"	"	----	25
	N. W. ¼, S. W. ¼,	"	"	"	----	25
	S. W. ¼, S. W. ¼,	"	"	"	----	25
	S. E. ¼, S. W. ¼,	"	"	"	----	25
	N. W. ¼, N. E. ¼,	12,	town. 15 S.,	R. 2 west	----	75
	S. W. ¼, N. E. ¼,	"	"	"	----	50
	N. E. ¼, N. W. ¼,	"	"	"	----	25
	N. W. ¼, N. W. ¼,	"	"	"	----	25
	S. W. ¼, N. W. ¼,	"	"	"	----	25
	S. E. ¼, N. W. ¼,	"	"	"	----	25
	N. W. ¼, S. E. ¼,	"	"	"	----	25
	S. W. ¼, S. E. ¼,	"	"	"	----	25
	N. E. ¼, S. W ¼,	"	"	"	----	25
	N. W. ¼, S. W. ¼,	"	"	"	----	25
	S. W. ¼, S. W. ¼,	"	"	"	----	25
	S. E. ¼, S. W. ¼,	"	"	"	----	25
	N. E. ¼, N. W. ¼,	"	"	"	----	25
	N. W. ¼, N. W. ¼,	"	"	"	----	25
	S. W. ¼, N. W. ¼,	"	"	"	----	25
	S. E. ¼, N. W. ¼,	"	"	"	----	25
	N. W. ¼, S. W. ¼,	"	"	"	----	25

	N. E. ¼, S. W. ¼,	section	12,	town. 15 S.,	R. 2 west	25
	S. W. ¼, S. W. ¼,	"	"	"	"	25
	S. E. ¼, S. W. ¼,	"	"	"	"	25
	N. E. ¼, N. E. ½,		10,	"	"	25
	S. E. ¼, N. E. ¼,	"	"	"	"	25
	S. W. ¼, N. E. ¼,	"	"	"	"	25
1019	N. E. ¼, S. E. ¼,	section	10,	town. 15 S.,	R. 2 W.	25
	N. W. ¼, S. E. ¼,	"	"	"	"	25
	S. W. ¼, S. E. ¼,	"	"	"	"	25
	S. E. ¼, S. E. ¼,	"	"	"	"	25
	N. E. ¼, N. E. ¼,		13,	"	"	25
	N. W. ¼, N. E. ¼,	"	"	"	"	25
	S. W. ¼, N. E. ¼,	"	"	"	"	25
	S. E. ¼, N. E. ¼,	"	"	"	"	25
	N. E. ¼ N. W. ¼	"	"	"	"	25
	N. W. ¼, N. W. ¼,	"	"	"	"	25
	S. W. ¼, N. W. ¼,	"	"	"	"	25
	S. E. ¼, N. W. ¼,	"	"	"	"	25
	N. E. ¼, S. E. ¼,	"	"	"	"	25
	N. W. ¼, S. E. ¼,	"	"	"	"	25
	S. W. ¼, S. E. ¼,	"	"	"	"	25
	S. E. ¼, S. E. ¼,	"	"	"	"	25
	N. E. ¼, S. W. ¼,	"	"	"	"	25
	N. W. ¼, S. W. ¼,	"	"	"	"	25
	S. W. ¼, S. W. ¼,	"	"	"	"	25
	S. E. ¼, S. W. ¼,	"	"	"	"	25
	N. E. ¼, N. E. ¼,		14,	"	"	25
	N. W. ¼, N. E. ¼,	"	"	"	"	25
	S. W. ¼, N. E. ¼,	"	"	"	"	25
	S. E. ¼, N. E. ¼,	"	"	"	"	25
	N. E. ¼, N. W. ¼,	"	"	"	"	25
	N. W. ¼, N. W. ¼,	"	"	"	"	25
	S. W. ¼, N. W. ¼,	"	"	"	"	25
	S. E. ¼, N. W. ¼,	"	"	"	"	25
1020	N. E. ¼, S. E. ¼,	section	14,	town. 15 S.,	R. 2 W.	25
	N. W. ¼, S. E. ¼,	"	"	"	"	25
	S. W. ¼, S. E. ¼,	"	"	"	"	25
	S. E. ¼, S. E. ¼,	"	"	"	"	25
	N. E. ¼, S. W. ¼,	"	"	"	"	25
	N. W. ¼, S. W. ¼,	"	"	"	"	25
	S. W. ¼, S. W. ¼,	"	"	"	"	25
	S. E. ¼, S. W. ¼,	"	"	"	"	25
	N. E. ¼, N. E. ¼,		23,	"	"	25
	N. W. ¼, N. E. ¼,	"	"	"	"	25
	S. W. ¼, N. E. ¼,	"	"	"	"	25
	S. E. ¼, N. E. ¼,	"	"	"	"	25
	N. E. ¼, N. W. ¼,	"	"	"	"	25
	N. W. ¼, N. W. ¼,	"	"	"	"	25
	S. W. ¼, N. W. ¼,	"	"	"	"	25
	S. E. ¼, N. W. ¼,	"	"	"	"	25
	N. E. ¼, S. E. ¼,	"	"	"	"	25

	N. W. ¼, S. E. ¼,	section 23,	town. 15 S.,	R. 2 W.	-------	25
	S. W. ¼, S. E. ¼,	"	"	"	-------	25
	S. E. ¼, S. E. ¼,	"	"	"	-------	25
	N. E. ¼, S. W. ¼,	"	"	"	-------	25
	N. W. ¼, S. W. ¼,	"	"	"	-------	25
	S. W. ¼, S. W. ¼,	"	"	"	-------	25
	S. E. ¼, S. W. ¼,	"	"	"	-------	25
	N. E. ¼, N. W. ¼,	24,	"	"	-------	25
	S. E. ¼, N. W. ¼,	"	"	"	-------	25
	N. E. ¼, N. E. ¼,	22,	"	"	-------	25
	S. E. ¼, N. E. ¼,	"	"	"	-------	25
	N. E. ¼, S. E. ¼,	"	"	"	-------	25
1021	N. W. ¼, S. E. ¼,	section 22,	town. 15 S.,	R. 2 W.	-------	25
	S. W. ¼, S. E. ¼,	"	"	"	-------	25
	S. E. ¼, S. E. ¼,	"	"	"	-------	25
	N. E. ¼, S. W. ¼,	"	"	"	-------	25
	N. W. ¼, S. W. ¼,	"	"	"	-------	25
	S. W. ¼, S. W. ¼,	"	"	"	-------	25
	S. E. ¼, S. W. ¼,	"	"	"	-------	25
	N. E. ¼, S. E. ¼,	15,	"	"	-------	25
	N. W. ¼, S. E. ¼,	"	"	"	-------	25
	S. W. ¼, S. E. ¼,	"	"	"	-------	25
	S. E. ¼, S. E. ¼,	"	"	"	-------	25
	N. E. ¼, S. W. ¼,	"	"	"	-------	25
	N. W. ¼, S. W. ¼,	"	"	"	-------	25
	S. W. ¼, S. W. ¼,	"	"	"	-------	25
	S. E. ¼, S. W. ¼,	"	"	"	-------	25
	N. E. ¼, S. E. ¼,	21,	"	"	-------	25
	N. W. ¼, S. E. ¼,	"	"	"	-------	25
	S. W. ¼, S. E. ¼,	"	"	"	-------	25
	S. E. ¼, S. E. ¼,	"	"	"	-------	25
	N. E. ¼, N. E. ¼,	27,	"	"	-------	25
	N. W. ¼, N. E. ¼,	"	"	"	-------	25
	S. W. ¼, N. E. ¼,	"	"	"	-------	25
	S. E. ¼, N. E. ¼,	"	"	"	-------	25
	S. E. ¼, N. E. ¼,	"	"	"	-------	25
	N. E. ¼, N. W. ¼,	"	"	"	-------	25
	N. W. ¼, N. W. ¼,	"	"	"	-------	25
	S. W. ¼, N. W. ¼,	"	"	"	-------	25
	S. E. ¼, N. W. ¼,	"	"	"	-------	25
	N. E. ¼, S. E. ¼,	"	"	"	-------	25
1022	N. W. ¼, S. E. ¼,	sec. 27,	town. 15 S.,	R. 2 W.	-------	25
	S. W. ¼, S. E. ¼,	"	"	"	-------	25
	S. E. ¼, S. E. ¼,	"	"	"	-------	25
	N. E. ¼, S. W. ¼,	"	"	"	-------	25
	N. W. ¼, S. W. ¼,	"	"	"	-------	25
	S. W. ¼, S. W. ¼,	"	"	"	-------	25
	S. E. ¼, S. W. ¼,	"	"	"	-------	25
	N. E. ¼, N. E. ¼,	26,	"	"	-------	25
	N. W. ¼, N. E. ¼,	"	"	"	-------	25
	S. W. ¼, N. E. ¼,	"	"	"	-------	25

S. E. ¼, N. E. ¼,	sec. 26,	town. 15 S.,	R, 2 W.	---- ----	25
N. E. ¼, N. W. ¼,	"	"	"	--------	25
N. W. ¼, N. W. ¼,	"	"	"	--------	25
S. W. ¼, N. W. ¼,	"	"	"	--------	26
S. E. ¼, N. W. ¼,	"	"	"	--------	25
N. E. ¼, S. W. ¼,	"	"	"	--------	25
N. W. ¼, S. W. ¼,	"	"	"	--------	25
S. W. ¼, S. W. ¼,	"	"	"	--------	25
S. E. ¼, S. W. ¼,	"	"	"	--------	25
N. E. ¼, N. E. ¼,	17,	"	"	--------	25
S. E. ¼, N. E. ¼,	"	"	"	--------	25
N. W. ¼, N. E. ¼,	"	"	"	--------	25
S. W. ¼, N. E. ¼,	"	"	"	--------	25
N. E. ¼, S. W. ¼,	9,	"	"	---- ----	25
N. W. ¼, S. W. ¼,	"	"	"	--------	25
S. W. ¼, S. W. ¼,	"	"	"	---- ----	25
S. E. ¼, S. W. ¼,	"	"	"	--------	25

Being a total price and sum of $53.75, fifty-three $\frac{75}{100}$ dollars,
1023 for which said purchase-money the said James F. Robinson has given his bond, and I do hereby so certify.

Given under my hand, as such sheriff as aforesaid, this 27th day of May, 1878.

S. H. HOLLAND, *Sheriff.*

Certificate of Purchase.

JAMES W. COOPER *vs.* WM. H. TODD.

In consideration of the sum of three hundred and eighty-one $\frac{25}{100}$ dollars to me in hand paid by Benjamin H. Smith I do hereby bargain, sell, and assign to said Smith the annexed, within, and foregoing certificate of purchase, together with all my right, title, interest, claim, and property in and to the lands described and set out in said certificate of purchase.

Witness my hand this Nov. 2nd, 1878.

JAMES F. ROBINSON.

Exercution Certificate of Purchase.

JAMES W. COOPER *vs.* WM. H. TODD.

I, S. H. Holland, sheriff of Chicot county, Arkansas, do hereby certify that on the 8th day of April, 1878, there was issued and to me directed and delivered by the clerk of the Chicot circuit
1024 court a certain exercution in favor of James W. Cooper and against Wm. H. Todd, and that by virtue and authority of said exercution I did, on the 9th day of April, 1878, levy upon certain lands situate in said county of Chicot, as is shown by the return on said exercution, and that on the 27th day of May, 1878, after having duly advertised said lands according to law, I did offer the same for sale at the time, place, and on the terms mentioned and set forth in said advertisement, and that at said sale Benj. H. Smith was

the highest bidder for and became the purchaser of the right, title, and interest of said Wm. H. Todd in and to the following-described tracts or parcels of said lands for the respective prices set opposite each, to wit:

N. E. ¼, N. E. ¼, section	18,	town. 15	S., R. 1	W.	$2 00
N. W. ¼, N. E. ¼,	"	"	"		50
S. W. ¼, N. E. ¼,	"	"	"		50
S. E. ¼, N. E. ¼,	"	"	"		50
N. E. ¼, N. E. ¼,	12,	"	"		1 00
S. E. ¼, N. E. ¼,	"	"	"		1 00
N. E. ¼, S. E. ¼,	"	"	"		1 00
S. E. ¼, S. E. ¼,	"	"	"		1 00

Being a total price and sum of $7.50, seven $\frac{50}{100}$ dollars, and that said B. H. Smith has this day given his bond for said purchase-money, and I do hereby so certify.

S. H. HOLLAND, *Sheriff.*

1025 STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the Chicot circuit court in and for the county and State aforesaid, do hereby certify that the preceding pages contain a true and correct copy of the execution issued out of this court on the judgement in favor of James W. Cooper and against Wm. H. Todd, rendered in said court, and the sheriff's return thereon, and certificates of purchase executed by the sheriff to B. H. Smith for a portion of the lands purchased at the sale under said execution, and to J. F. Robinson for a portion of the lands purchased at said sale, as the same appears of file in my office.

Witness my hand and the seal of said court, hereto attached this 26th day of Nov., 1879.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

[Endorsed:] Exhibit "L" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, clerk, by W. W. Wilkinson, d. c. Filed Feb. 9th, 1884. Ralph L. Goodrich, clerk.

1026 *Exhibit "M" to the Deposition of Geo. T. Wilkinson.*

At the July term, 1876, of the Chicot circuit court, on the 21st day of July, 1876, a day of said term of said court, among others the following proceedings were had, viz:

JUREY & GILLIS, Plaintiffs, *against* WM. H. TODD, Defendant.

On this day came both parties, by their attorneys, and defendant files his bond releasing the property attached, which bond is approved, and defendant consenting that judgment shall be rendered against him for the amount sued for, it is therefore ordered and adjudged that the plaintiffs have and recover of and from the defendant, W. H. Todd, and Benj. H. Smith and Isaac Cohen, sureties on the bond of defendant, the sum of fourteen hundred and sixty-

nine $\frac{66}{100}$ (1,469.66) dollars, being the principal and interest to date, with interest on said sum at 8 per cent. per annum from this date, besides all costs herein, with stay of execution until Dec. 1st,
1027 1876, and all further stay waived.

Endorsed: Satisfied in full. Jurey & Gillis, by D. H. Reynolds. April 2d, 1877. H. W. Graves, clerk, by Geo. T. Wilkinson, D. C.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing page and the above writing on this page contains a true and correct copy of a judgment rendered at the July term, 1876, in favor Jurey & Gillis against Wm. H. Todd, Benjamin H. Smith, and Isaac Cohen, together with the endorsement thereon, as the same appears of record in my office in record book of Chicot county circuit court "H," page 92.

Witness my hand and the seal of said court, hereto affixed this 26th day of Nov. 1879.

GEO. T. WILKINSON, *Clerk, &c.*

1028 Endorsed thereon: Exhibit "M" to the deposition of Geo. T. Wilkinson. Geo. T. Wilkinson, cl'k.

1029 In the Pulaski Chancery Court, at the October Term thereof, 1873, on the 14th day of February, 1874.

STATE OF ARKANSAS, &c.,
vs.
BILL FOR FORECLOSURE OF MORTGAGE, LANDS MORTGAGED FOR Stock in Real Estate Bank, by Silas Craig, Transferee of Samuel Townsend. } 184.

This day appeared the State, by her attorney, General T. D. W. Yonley, and the report of the masters in chancery is now filed in this cause, and, on motion, it is or-ered, adjudged, and decreed that the same be approved and confirmed, and that the lands mentioned in the bill of complaint, viz., the S. W. fr'l ¼, the W. ½ of S. E. ¼, and S. ½ of N. E. ¼ of section six, the whole of section seven, N. E. section seventeen and N. E. ¼ of sec. 18, all in township 15 south, range
1 west, 1,280 acres, Arkansas, be charged with the sum of
1030 $15,985.05, together with interest thereon from October 1st, 1870, at six per cent. per annum until paid, the *pro rata* liability thereon so found and reported by the masters and condem-ed for the payment thereof, and that notice of such condemnation be given and publis-ed according to law.

STATE OF ARKANSAS, *Pulaski County:*

In Pulaski Chancery Court.

THE STATE OF ARKANSAS, who Sues, &c., Complain't,

vs.

BILL FOR FORECLOSURE OF MORTGAGE, THE LANDS MORTGAGED FOR Stock with Real Estate Bank of Arkansas, by Silas Craig, as Transferee of Samuel Townsend, Defendant.

To the Hon. John R. Eaker, chancellor:

The subscriber, to whom the above-entitled cause is refer-ed as special master in chancery to take and state an account of the liability chargeable upon the several parcels of land embraced in the mortgage exhibited with the bill of complaint in this
1031 cause, the equity of redemption in which is claimed, respectively, by William H. Todd and James McMurray and Charles W. Saunders, having examined the matters so directed to be inquired into and considered the same, do find and report as follows, to wit:

1st. That the total liability chargeable upon all the lands embraced in said mortgage executed by Silas Craig, as transferee of Samuel Townsend, to secure one hundred and eighty-two shares of stock in said Real Estate Bank amounts to the sum of fifteen thousand nine hundred and eighty-five dollars and five cents, $15,985.05, as stated in the former report of the master, filed in this cause, which sum is chargeable with interest at the rate of six per centum per annum from the first day of October, A. D. 1870, until paid.

2nd. That the total appraised value of all the lands em-
1032 braced in said stock mortgage amounts to the sum of seven thousand five hundred and sixty dollars, $7,560.00, as shown by the apprais-ment thereof, which is annexed to and made part of this report.

3rd. That the aggregate appraised value of the several parcels of land embraced in said stock mortgage, the equity of redemption in which is claimed by William H. Todd, viz., the S. W. fr'l ¼, sec. 6, 160 acres; west half S. E. ¼, sec. 6, 80 acres; S. ½ N. E. *E.* ¼, sec. six, 80 acres; sec. seven, 640 acres, N. E. ¼, sec. eighteen, 160 acres, is seven thousand two hundred and forty dollars, $7,240.00, as shown by said apprais-m-nt; and their propo-tion of the said sum of $15,985.05, the total liability chargeable upon all the land embraced in said mortgage, amounts to the sum of fifteen thousand
1033 three hundred and eight dollars and forty-three cents, $15,308.43, which sum is chargeable with interest at the rate of six per centum per annum from the first day of October, A. D. 1870, until paid.

4th. That the appraised value of the parcel of land embraced in said stock mortgage, the equity of redemption in which is claimed by the said James McMurray and Charles W. Saunders, viz., the northeast quarter of section seventeen, in township fifteen south, range one west, 160 acres, is three hundred and twenty dollars ($320.00), and its proportion of the said sum of $15,985.05, the total liability chargeable upon all the lands embraced in said stock mort-

gage, amounts to the sum of six hundred and seventy-six dollars and sixty-two cents ($676.62), which sum is chargeable with interest at the rate of six per centum per annum from the first
1034 day of October, A. D. 1870, until paid.

The above an- foregoing report is made and based upon the former report of the master filed in this cause and the several statements and exhibits annexed to and made part thereof and the appraisement of the lands embraced in said stock mortgage, which is annexed to and made part of this report.

All of which is respectfully submitted.

GORDEN N. PEAY,
Special Master in Chancery.

STATE OF ARKANSAS, *County of Chicot:*

We, Charles W. Fry, Albert N. Smith, and Edger G. Hodgkin, citizens of the county of Chicot, in the State of Arkansas, being called upon to appraise the lands described below, mortgaged for
1035 stock in the Real Estate Bank of Arkansas by Silas Craig, as the assignee of Samuel Townsend, and being duly sworn, do state on oath that we have no personal interest in the said lands and are not of kin to any person interested therein, and that we will duly appraise each of said parcels of land at their present actual value in currency according to the best of our knowledge and judgment.

C. W. FRY,
E. G. HODGKIN,
A. A. SMITH,
Appraisers.

Sworn to and subscribed before me this 21st day of March, 1875.
W. N. BROWN, *J. P.*

1036 *Description and Appraisement of Lands.*

Part of ¼ or ½, ¼ sec. of sec.	Sec.	Town.	Range.	No. of acres.	Appraised value per acre with improvements.	Aggregate appraised value.
Todd, &c. { S. W.	6	15 S.	1 W.	160	550	880
Todd, &c. { W. ½, S. E. —	6	"	"	80	1,250	1,000
Todd, &c. { S. ½, N. E. —	6	"	"	80	100	80
Todd, &c. { All	7	"	"	640	800	5,120
Todd, &c. { N. E. —	18	"	"	160	100	160
McMurray, N. E. ¼	17	"	"	160	200	320
Aggregate appraised value						7,560

Given under our hands this 21st day of March, 1875.

C. W. FRY,
C. H. SMITH,
E. G. HODGKIN,
Appraisers.

Filed Dec. 18th, 1875.

A. R. WITT, *Clk*,
By A. E. EAKIN, *D. C.*

1037 In the Pulaski Chancery Court, at the September Term thereof, 1875, on the 18th day of December, 1875.

THE STATE OF ARKANSAS, for the use of The Real Estate Bank, *v.* CERTAIN LANDS MORTGAGED BY SAMUEL TOWNSEND. } 184

Comes the State of Arkansas, by her attorney general, and also come James McMurray and Charles W. Saunders, by A. H. Garland and Gallagher & Newton, their solicitors, and the report of Gorden N. Peay, the special master in chancery herein, is filed and in all things approved and confirmed, and a fee of $25.00 allowed said special master and taxed as costs in this cause; and thereupon, by consent, a decree of redemption is entered herein, based on said special master's report, as follows:

1038 And now, on this 18th day of December, 1875, comes James McMurray and Charles W. Saunders, and having produced and shown to the court sufficient evidence of title, whereby it appears that said James McMurray and Charles W. Saunders are the owners of the equity of redemption and entitled to redeem the following-described tract of land, to wit, northeast quarter of section seventeen, 17, in township fifte-n, 15, south, range one, 1, west, containing 160 acres; and the said James McMurray and Charles W. Saunders having well and truly paid all the costs that have accrued in this cause, *at* it further appearing that the sum of six hundred and seventy-six & $\frac{62}{100}$ dollars debt, and the s-m of two hundred and twelve & $\frac{26}{100}$ dollars' damages, by way of interest, is due and owing upon said lands to the State of Arkansas on account of the mortgage thereof to the Real Estate Bank of the State of Arkansas:

1039 It is, therefore, further considered, ordered, and decreed that in case the said James McMurray and Chas. W. Saunders will well and truly pay the said sum of six hundred and seventy-six & $\frac{62}{100}$ dollars debt and two hundred and twelve & $\frac{26}{100}$ dollars damages, amounting in all to the sum of eight hundred and eighty-eight & $\frac{88}{100}$ dollars, with interest at the rate of seven per cent. per an'm from this date until paid, in fifteen equal annu-l installments, the first installment of principal and interest being due and payable on the 1st day of January, 1875, subsequently extended to the first day of January, 1876, and the subsequent installments, principal and interest, severally due and payable on the first day- of January of each subsequent year:

1040 Thereupon the decree of condemnation heretofore rendered as to said northeast quarter of section seventeen, 17, township fifteen, 15, south, range one, 1, west, shall be set aside, and the title in fee-simple to said lands shall be vested in said James McMurray and Chas. W. Saunders, and their heirs forever, with a covenant of warranty in the statutes in such cases made and provided required.

It is, however, considered, ordered, and decreed that in case the said James McMurray and Chas. W. Saunders should at any time fail to pay any of said installments of principal and interests when the same shall become due and payable as aforesaid, then the said decree of condemnation shall remain in full force and effect, and the bonds shall be seized by the commissioner of the court under and by virtue of and in accordance with the provisions of the act of the Legislature of the State of Arkansas, approved January 16th, 1861, entitled An act to aid the foreclosure of stock the mortgages
1041 given to secure subscription to the Real Estate Bank of the State of Arkansas. It is further considered, ordered, and decreed that until failure on the part of the said James McMurray and Chas. W. Saunders to pay any of said installments of principal and interest that the said James McMurray and C. W. Sandurs shall be allowed to remain in the quiet and peaceable possession of said land, free of rent, and without impeachment of *waste*.

It is further considered, ordered, and decreed that said several installments of principal and interest may be paid at any time, when due or not due, and fully discharged, either in Treasury warrants or State script or United Stat-s currency or any of the bonds of the State of Arkansas and the coupons thereto attached, w-ether said bonds are due or not due, except the bonds issued by the
1042 State of Arkansas and commonly called "State aid bonds" and *and* the bonds of the State of Arkansas commo-ly called "levee bonds."

Indorsement- on the margin of the record:

"Paid 1st & 2nd installments, $129.90.
23rd February, 1876.

ALLEN R. WITT, *Clerk*,
By A. E. EAKIN, *D. C.*"

"P'd 3rd installment of 63.40.
Dec'r 21, 1876.

J. W. CALLOWAY, *Clerk*."

"Paid $1,022.25, April 4th, 1882, by filing treasurer's receipt in full of this decree.

J. W. CALLOWAY, *Clerk*."

In the Pulaski Chancery Court, at the September Term thereof, 1875, on the 18th Day of December, 1875.

STATE OF ARKANSAS, for the use of Real Estate Bank,
vs.
CERTAIN LANDS MORTGAGED TO THE R. E. BANK BY SAMUEL TOWNSEND. } 184.

1043 Cones the State of Arkansas, by her attorney genearl, and and also come- William H. Todd, by A. H. Garland and Gallagher & Newton, his solicitors, and ask to be allowed to redeem

under his application heretofore filed herein, and it appearing to the court that the special master in chancery has made and filed in the cause his report showing the *pro rata* liability on the lands *south* to be redeemed by William H. Wodd, it is, by consent, ordered that a decree of redemption be entered now in favor of said William H. Todd, based on said special master's report, as follows:

And now, on this 18th day of December, 1875, comes William H. Todd, and, having produced and shown to the court sufficient evidence of title whereby it appears that the said William H.
1044 Todd is the owner of the equity of redemption and is entitled to redeem the following-described tracts of lands, to wit, southwest f-actional quarter and west half of southeast quarter and south half of northeast quarter of section six (6), all of section seven (7), and the northeast quarter of section eighteen (18), all in township fifteen (15) south, range one (1) west, in Chicot county, Arkansas, and the said William H. Todd having well and truly paid all the costs that have accrued in this cause, and it further appearing that the sum of fifteen thousand three hundred and eight & $\frac{43}{100}$ dollars debt and the sum of four thousand seven hundred and ninety-one & $\frac{52}{100}$ dollars damages by way of interest is due and owing upon said lands to the State of Arkansas as an account of the mortgage thereof of the Real Estate Bank of the State of Arkansas—

It is, therefore, further considered, ordered, and decreed that
1045 in case the said William H. Todd will well and truly pay the said sum of fifteen thousand th-ee hundred and eight & $\frac{43}{100}$ dollars debt and four thousand seven hundred and ninety-one & $\frac{52}{100}$ dollars damages, amounting in all to the sum of twenty thousand and ninety-three dollars and ninety-five cents, with interest at the rate of seven per cent. per annum from this date until paid, in fifteen equal annual installments, the first installment of principal and interest being due and payable on the first day of January, 1875, and the subsequent installments, principal and interest, being due and payable on the first day of January of each subsequent year, thereupon this decree of condemnation heretofore rendered as to said southwest fractional quarter and west half of southeast quarter and south half of the northeast quarter of section six, 6, and the whole of section seven, 7, and the northeast quarter of section eight-
1046 een, 18, all in township fifteen, 15, south, range one, 1, west, shall be set aside and the title in fee-simple to said lands shall be vested in said William H. Todd and his heirs forever, with a covenant of warranty in the statutes in such cases made and provided required.

It is, however, further considered, ordered, and decreed that in case the said William H. Todd should at any time fail to pay any of said installments of principal and interest when the same shall become due and payable as aforesaid, then the said decree of condemnation shall remain in full force and effect and the lands shall be seized by the commissioner of this court under and by virtue of and in accordance with the provisions of the act of the Legislature of the State of Arkansas approved January 16, 1861, entitled An — to aid the foreclosure of the stock mortgages given to secure

1047 subscription to the Real Estate Bank of the State of Arkansas.

It is further considered, ordered, and decreed that until failure on the part of the said William H. Todd to pay any of said installments of principal and interest that the said William H. Todd shall be allowed to remain in the quiet and peaceable pos-session of said land free of rent and without impeachment of *waste*.

It is further considered, ordered, and decreed that said several installments of pr-cipal and interest may be paid at any time, when due or before due, and fully discharged, either in Treasure warrants on State scrip or United States currancy or any of the bonds of the State of Arkansas and the coupons thereto attached, w-ether said bonds are due or not due, except the bonds issued by the State
1048 of Arkansas and commonly called "State aid bonds" and the bonds of the State of Arkansas commonly called "levee bonds."

Indo-sement- on the margin of the record:

"Paid 1st installment, $1,489.05, on 5th of Jan'y, 1876.
ALLEN R. WITT, *Clerk*,
By A. E. EAKIN, *D. C.*"

"Paid 2nd installment, $1,415.55, Oct. 26, 1876.
A. R. WITT, *Clerk*,
By A. E. EAKIN, *D. C.*"

"Paid p't of 3rd installment, $584.45, Oct. 26, 1877.
J. W. CALLOWAY, *Clerk.*"

April 26, 1878, paid $2,476.86 as part of 3rd & all of 4th instalments; also $33 14 on 5th installment.
J. W. CALLOWAY, *Clerk.*

"$2,000 paid Ma-ch 31, 1880, being balance in full of 5th installment; $295.20 on sixth installment, paid by Ben. H. Smith.
J. W. CALLOWAY, *Clerk.*"

Paid on 21st April, 1881, balance on 6th installment,
1049 $1,645.00, and on account of 7th installment the sum of $855.00.
J. W. CALLOWAY, *Clerk*,
By S. R. BROWN, *D. C.*

Paid balance of 7th installment, $1,047.25, and on account 8th inst., $532.75, paid by Ben. H. Smith April 21, 1882.
J. W. CALLOWAY, *Clerk*,
By S. R. BROWN, *D. C.*

STATE OF ARKANSAS, *County of Pulaski:*

I, J. W. Calloway, clerk of said Pulaski chancery court, hereby certify that the annexed and foregoing twelve pages contain a true, correct, and complete copy of the decree of condemnation, report of

special master, and the two decrees of redemp-ion in the foregoing-entitled cause as the same appear of record and on file in my office.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of said court, at office, in the city of Little
1050 Rock, this 19th day of December, 1883.

J. W. CALLOWAY, *Clerk*,
By S. R. BROWN, *D. C.*

Endorsed: Feb-uary 9th, 1884. Ralph L. Goodrich, clerk.

1051 E. WHITE, a witness on behalf of the plaintiff, being duly sworn, deposed as follows, to wit:

My name is E. White; age, 72 years; I reside in Chicot county, Arkansas.

I was the manager of the Yellow Bayou plantation in Chicot county, Ark., from some time in April, 1872, to some time—I think about Christmas of the same year.

I was in the employ of Mr. William H. Todd and reported direct to him. There was no other manager on the place during that time.

I don't remember who was the manager before me. I think that Mr. Simmons succeeded me.

I did not gin any cotton while on the place.

Captain Smith did not have any control over the management of the place during the time that I was on the place.

1052 During the time that I was on the place there was planted about 300 acres cotton and about 75 acres in corn. I can't state the exact number of acres, because it has been a number of years ago. The crop was a pretty good one and pretty well gathered when I left; the corn was all gathered and a good portion of the cotton also.

Mr. Todd was then on the place about four or five weeks when I first went there. He came back about a week before I left in the fall or winter.

(Sign-d) E. WHITE.

Cross-examination:

None of the Yellow Bayou cotton was ginned before I left there.

I think Jackson Brown's cotton was not ginned before I left there.

I have some recollection of Captain Walker attaching some of the mules on the place. I do not know what disposition was
1053 made of that attachment.

I don't remember about going to Captain Smith to see about having the mules released. I don't know how the mules were released; don't know whether any of them were ever taken from the place; don't think they were.

Mr. Todd gave me a written order for supplies, but I never used such order. I got my supplies from Cohen at Luna. I wrote to Mr. Todd almost weekly and received answers almost as often.

I think there was one or two houses full of cotton on the place of of the last year when I left there.

I think this cotton was hauled to Captain Smith's gin by the negroes on the place. I had nothing to do with it.

I don't know who had the cotton ginned or who divided it with the hands.

Capt. Todd paid me my wages—a portion of it in money and a draft for the remainder on Mr. Cohen. I presented the draft for payment and Mr. Cohen refused to pay it. Mr. Smith then
1054 saw me and arranged for the payment of the draft. The draft was then paid, and so I got my money through Captain Smith.

(Sign-d) E. WHITE.

And at the same place and on the 14th day of November, 1883, came WM. B. STREET, a witness on behalf the defendants, who, after being duly sworn, deposed as follows, to wit:

My name is William B. Street. I reside in Chicot county, Arkansas; have resided there, except at intervals of about three years, for 25 years; my age is 46 years.

I was acquainted with Wm. H. Todd in his lifetime, and am acquainted with Mr. B. H. Smith. I have known Mr. Smith about 14 or 15 years,—ever since he came to this county; have known Mr. Todd since 1860 to the time of his death.

I know the Yellow Bayou and Bellevue plantations. I have lived on an adjoining plantation for 9 or 10 years.
1055 Since I have known Captain Smith his business has been that of a planter. He has been on the Yellow Bayou and Bellevue plantations, one or the other, since 1869 or 1870; this is my recollection.

I don't know who Captain Smith represented. He was then transacting business on those places since I have known him, except that Mr. Todd was there himself occasionally.

9. What would be a fair compensation for the services of Captain Smith per annum on those places?

(Objected to by plaintiff as being irrelevant, as Captain Smith, being a son-in-law of Mr. Todd and part owner with him in one of the plantations, can only by law claim wages as such under special contract.)

Ans. I don't know what Captain Smith represented, whether he represented both plantations or not. I don't know anything about that. For the Yellow Bayou place it would be worth, in the
1056 absence of the owner, from $1,200.00 to $1,500.00. I don't think a good manager could be put there for less. For the Bellevue plantation I think $1,200.00 would be a fair compensation—that is for a competent man.

I have been planting for 15 years.

Captain Smith has stayed at home and attended to his business and made fair crops.

During the years 1870, & I think 1871, I know that Mr. Smith paid the taxes on the Yellow Bayou and Bellvue plantations.

(Defendant Smith here presented to witness two papers, marked, respectively, "A & B," endorsed and identified by him as a part of this deposition by witness.)

I recognize these papers as evidence of a transaction between myself and Captain Smith with regard to the taxes on the Yellow Bayou and Kilbom plantations.

1057 My recollection is that there was a draft given for the taxes, which was not paid. A distress warrant was issued against personal property, and the property was released under the agreement with Captain Smith, marked "A," to the proceeding answer.

Cross-examination:

I don't know whether Captain Smith mortgaged the Yellow Bayou and Bellevue plantations in both any one year or not. He was there and paid the taxes on those places for the two years that I had charge of the revenue. It was during the years 1869 & 1870 or 1870 & 1871. So far as I know, Capt. Smith has been the sole manager of the Bellvue plantation since I have known him, and Yellow Bayou, too, so far as I know.

I don't know whether Captain Smith managed or had charge of the Yellow Bayou plantation after he went to Bellvue or not.

1058 I don't know whether Mr. John Simmons was on the Yellow Bayou plantation between 1869 & 1877 as manager or not. I had no business transactions with him. I don't even know whether he was on the place or not.

I do not know whether Mr. Richard Scott was even the manager of the Yellow Bayou plantation or not.

I do not know whether Mr. Kirk ever lived on or had the management of the place between 1869 — 1877 or not. Mr. Todd had a lot of men on the place whose names I did not know, nor do I know the men. I would not have known of Mr. Smith being on the Yellow Bayou plantation, except for business transactions had with Mr. Todd. Mr. Todd referred me to Capt. Smith.

I do not know Mr. Mole. I don't know whether he ever lived on or had the management of the Yellow Bayou plantation or not between the years 1869 & 1877.

1059 I don't know that Mr. Smith had charge of the Yellow Bayou plantation after the year 1869, except *that* the business transactions heretofore spoken of relating to the taxes and other business matters. Mr. Todd said that if his paper was not paid that Mr. Smith would ship cotton to pay off the debts; that he, Mr. Smith, was there and in charge of the place. This was while Mr. Smith was living on the Yellow Bayou plantation.

I don't know whether Mr. Smith had charge of the Yellow Bayou place after he went to live on the Bellevue place or not, and I don't know in what year Mr. Smith went to live on the Bellevue place.

Mr. Todd was on the Yellow Bayou plantation occasionally from 1868 to 1872.

During the time that Mr. Todd was here I suppose he took such charge of his property as the owner thereof would; I don't know what charge or how far he controlled his property when here.

1060 When the owner gives his personal attention the services of a manager would be worth less than when no superintendence — care — given.

If the manager of the Bellevue plantation were a half owner thereof, and all expenses and circumstances being equal, I think $600.00 or $700.00 per year would be a fair compensation for the management of the place, this amount being one-half of a regular salary.

I don't remember whether it — Mr. Todd's or Mr. Smith's paper that went to protest that was given for the payment of the taxes.

I don't know whose crop was shipped to pay the amount of taxes after the paper went to protest.

I don't remember any transaction with Capt. Smith in a business transaction with the Yellow Bayou plantation or its management, except that referred to in the payment of the taxes.

1061 I don't know of Capt. Smith having had the management of the Yellow Bayou plantation after 1870 or 1871.

Re-examined:

Since 1869 I don't know of any other superintendent and manager on the Yellow Bayou plantation *other* than Capt. Smith. They may have been others, but I know nothing of them, and don't know that Capt. Smith was after 1870 or 1871.

And further the deponent sayeth not.

(Signed) W. B. STREET.

1062 *Exhibit "A" — Dep. of W. B. Street.*

Know all men by these presents that whereas Todd & Smith are indebted unto F. P. Walker, collector of Chicot county, for taxes due on their personal property and the land known as Yellow Bayou and Bellevue plantations for the year 1870, in the sum — 742.26 dollars, being balance due on said taxes; and whereas William B. Street has this day given his sight draft for said sum to pay said taxes, drawn on Buckner & Co., of New Orleans, La., now, in order to secure said Street for said accommodation, I, Benjamin H. Smith, has sold to said Street and agree to deliver to his order, in New Orleans, La., fourteen bales of merchantable cotton, to be sold by Messrs. Buckner & Co., — the proceeds of which said Street will first pay said draft and his charges—say 50 dollars—and the balance account for to said Smith.

In testimony of which I hereunto set my hand this July 8th, 1871.

(Signed) BENJ. H. SMITH.

Witness:
W. B. STREET.

1063 *Exhibit B to Deposition of W. B. Street.*

(Steamboat.) Shipped, in good order and well-conditioned, — D. H. Sessions, on board the good steamboat Ouachita Bell, the following articles, marked as below, which are to delivered, without delay, in like good order and condition, at the port of New Orleans (the unavoidable dangers of navigation and fire only excepted), unto Buckner & Co. or assigns, he or they paying freight for said goods at — rates or 12 t.

In witness whereof the owner, master, clerk, or agent of said boat hath affirmed to 2 bills of lading of this tenor and date, one of which being accomplished the others — stand void.

Dated at Bellevue on this 30th day of July, 1871.

Marks.	Articles.	Charges.
W. B. S.	Fourteen (14) bales cotton for ac. W. B. Street----	
B. H. S.	Nine (9) bales cotton for ac. B. H. Smith----------	

N. O. ARNONSTED.

1064 *Deposition of C. H. Carlton.*

My name is C. H. Carlton; age, 45 years; I reside in Chicot county, Arkansas; my occupation a lawyer.

I was acquainted with Mr. Wm. H. Todd in his lifetime.

He was the owner of the Yellow Bayou plantation. I think he went into possession of the Yellow Bayou plantation and the Bellevue plantation some time in 1868.

Mr. Todd sold a half interest in the Bellevue plantation to Mr. Smith some time afterward; I don't remember exactly when.

At the time Mr. Todd acquired possession of the Yellow Bayou place Mr. Smith had charge of it and lived on the place.

I think about two years afterwards Mr. Smith moved to the Bellevue place.

I don't know of my own knowledge who had control of the Yellow Bayou plantation from the time Capt. Smith left it,
1065 but I have always been under the — that Capt. Smith had a general superin-ding control of the Yellow Bayou plantation from 1869 to 1877, although during the greater part of that time there were other special managers on the farm. For instance, I remember that Mr. White, Mr. Simmons, Mr. Mole, and Mr. Kirk were special managers on the place.

I wish also to state that my impression *is* that Captain Smith had a general superintending control is founded upon business transactions with Mr. Smith for Mr. Todd. These transactions consisted of the shipments of various lots of cotton to New Orleans by Capt. Smith for my account, a part of which came from Yellow Bayou during *during* those years. This cotton was principally shipped during the year 1874. I don't know who was the manager on the place that year.

During the years 1869 & 1877 Mr. Todd visited the place frequently, and while there exercised a general superintending
1066 control of the place, but never remained there but a few weeks at a time.

During the time aforesaid Capt. Smith had control and management of the Bellevue plantation.

I think that sections 6 & 7, in T. 15, cost $30 per acre.

I don't regard the Bellevue plantation as being worth as much now as a plantation as it was in 1876 & 1877 by $10,000.00, on account of recent breaks in the levees. I think the place worth now, with the general condition of the levees, about $20,000.00. I- the place was protected from overflow I *I* should consider it worth $50,000.00.

Q. What is the comparative value of the Sunnyside plantation with the Bellevue plantation?

Objected to by the def't as irrevalent.

Ans. I don't know what the relative sizes are of the places, but from their general appearances and repute I should consider
1067 the Sunnyside plantation worth about 4 or 5 times as much as the Bellevue plantation, in their *in their* present condition. I think the Bellevue plantation equal in value, if protected by levees, with the Sunnyside plantation to the extent or relative number of acres in the place for planting purposes.

Cross-examined:

The Bellevue and Yellow Bayou places are adjoying and contiguous.

I had the taxes on the Yellow Bayou and Bellevue plantations redeemed. I don't remember at whose instance it was done. I was Mr. Todd's att'y from 1866 to about 1874, and was in — habit of attending to his legal business, and in his absence was in the habit of consulting Mr. Smith about Mr. Todd's interests involved in court.

I have received letters from Mr. Todd in Philadelphia, and have been refer-ed by Mr. Todd to Mr. Smith for settlement of
1068 claims due me by Mr. Todd, and Mr. Smith did turn over to me several lots of cotton in pursuance of instructions from Mr. Todd, and some of that cotton was from the Yellow Bayou plantation. This cotton was all turned over to me during the years 1873 & 1874.

In my examination-in-chief my statements in regard to the value of sec. 6 & 7, T. 15, 1 W., I refer-ed to the cleared portion of said land.

I know that the Sunnyside plantation has a valuable landing on it, which the Bellevue plantation has not got.

As att'y for the est. of H. F. Walworth, I sold, about 1872, 80 acres of land upon which the Bellevue gin stands. This property was bid in for W. H. Todd and B. H. Smith for $4,350.00. My recol-ection is that Captain Smith bid the property in at the sale.

My recollection is that the cotton raised on the Yellow Bayou plantation from 1868 to 1872, inclusive, was ginned at the Bellevue gin.

And further deponent saith not.

(Signed) C. H. CARLTON.

1069 And at the same place and on the 15th day of November, 1883, came James McMurray; age, 45 years; resides at Luna Landing, Chicot county, Arkansas; occupation, a merchant.

I was acquainted with Mr. Wm. H. Todd, in his lifetime, and am acquainted with Mr. B. H. Smith.

Mr. Todd owned the Yellow Bayou and Bellevue plantations from 1868 to 1877.

I think that Mr. Richard Scott occupied the position of manager of the Yellow Bayou plantation during the year 1870, and, I think, a part of 1871. Part of the time that Mr. Scott was there Mr. Todd's two sons, Richard & Derringer, were there also, and came to my store and bought goods for the place, as also did Mr. Todd himself.

I sold some goods and supplies for the Yellow Bayou plantation, charging the same to the account of W. H. Todd.

1070 Mr. Scott bought some goods for the place during the time, not, however, any general line of supplies for the place. Mr. Todd purchased the general supplies for the place. Mr. Scott frequently bought some for odds and ends for the hands.

There was another manager on the place subsequent to Mr. Scott, named Mr. Mole, and yet another named Kirk, and, I think, Mr. White and Mr. Simmons.

Mr. Scott was on the place first in the capacity of school teacher and afterwards as a carpenter. When Mr. Todd left Mr. Scott was left on the place as a sort of a manager. I don't think, however, he had a general supervising control of the place, so far as the cultivation of the place was concerned. Afterwards Mr. Mole and afterwards Mr. Kirk had the general management and control of the place.

1071 Under a judgment in favor of my firm a portion of the Bellevue plantation was sold in 1876. I think the cleared portions of sections 6 & 7, T. 15, 1 W. were worth about $40.00 per acre at that time — I mean 1876 & 1877. I mean that cleared lands which is under fence, with necessary improvements thereon, and under cultivation.

I think the Bellevue plantation in its present condition is worth $40,000.00 without and free of incumberance, and if thoroughly protected from overflow would be worth 50 per cent. more.

Cross-examination:

I never knew of any cotton ever having been divided at the Bellevue gin except by Capt. Smith. I can't speak of the Yellow Bayou cotton in particular.

I recognize the two papers marked Exhibits C & D and endorsed by me as evidence of transaction of myself with Mr. Todd through Capt. Smith.

The money referred to — Exhibit C was for mules and taxes connected with the Yellow Bayou and Bellevue plantations

1072 furnished Mr. Todd by me.

Exhibit "D" refers to money paid for taxes on the Yellow Bayou and Bellevue plantations.

I remember of having had business transactions with the hands on the Yellow Bayou plantation from 1869 to 1877. I got a good deal of cotton from the hands during — time. I don't remember who divided the cotton with the Yellow Bayou hands that I supplied. I was generally present when the cotton belonging to the hands that I supplied was divided at the Bellevue gin. I don't recol-ect of ever being present at a division of cotton of the hands furnished by me at the Yellow Bayou gin. The Yellow Bayou cotton was ginned at the Bellevue gin until the Yellow Bayou gin was fixed. The gin was fixed in 1873 or 1874. All my transactions in the division of cotton with the hands I furnished were at the Bellevue gin during the time the Yellow Bayou gin was out of repair. I am satisfied the Bellevue worm was broken in 1865.

1073 Re-examination:

I do not know of Capt. Smith ever having had a supervising control or management of the Yellow Bayou plantation from 1869 to 1877.

And further the depon*ith* say*ith* not.

JAS. McMURRAY.

Exhibit "C" to Deposition of Jas. McMurray.

BELLEVUE, CHICOT COUNTY, ARK.

Rec'd of W. H. Todd, by the hands of Capt. B. H. Smith, sight check on Drexel, Morgan & Co., of New York, for the sum of eight hundred dollars, on account of balance due on a certain note executed by said W. H. Todd, and payable to the order of Mrs. Minnie McMurray, dated January 10th, 1871, and due one year after date, which note has been stolen or lost. A former payment of eighteen hundred dollars was made on the above-described note for 2,359.00 on or about the 20th day of February last, for which Mr. Todd holds my rec-ipt

(Signed) J. McMURRAY.

Belleville, Aug. 1st, 1872.

1074 *Exhibit "D" to Deposition of Jas. McMurray.*

Received of Benjamin H. Smith his draft at three days' sight on Messrs. Gates & Rulerfield, of New York city, for one hundred and seventy dollars, on ac. of taxes paid by me on the lands of W. H. Todd in Chicot county, Ark., for the year 1868.

(Signed) JAS. McMURRAY.

June 14th, 1869.

{2 Internal Revenue. 2
June 14th, 1869.
2 U. S. Revenue. 2}

1074*a* At the same place, on Nov. 15th, came R. E. CRAIG, a witness for plaintiff, and, being duly sworn, testified as follows, to wit:

My name is R. E. Craig; occupation, farmer & lawyer; I reside in Chicot county, Arkansas; age, 42 years.

Lands have little or no cash value. I estimate the value by what they will produce. By this criterion I think Bellevue plantation worth about $40,000.00, and if protected from overflow would be worth 55,000.00 or $60,000.00

Two years ago this fall Capt. Calhoun and myself went to Capt. Smith to see if he would sell Bellevue, and, if so, for what price. He answered that he did not wish to sell the Bellevue place, and declined to fix any price. Capt. Calhoun urged him to fix a price, telling him if he would fix it at a fair price he thought he could negotiate the sale. Capt. Smith told him he would think
1075 about it and let me know in a few days. Four or five days afterwards he wrote me a note saying if anybody wanted to buy Bellevue they could have it for $75,000.00, and the purchaser pay the Real Estate Bank debt. The condition and prospects of Bellevue at that time was vastly different from its present relations.

(All of the testimony connected with the interview of Captain Calhoun and Mr. Craig with Mr. Smith touching the purchase of the Bellevue plantation is objected to as irrelevant.)

And further the deponent sayeth not.

(Sign'd) ROB'T E. CRAIG.

1076 At the same place and on the 16th day of November, 1883, Mr. R. E. CRAIG was recalled to testify on behalf of the defendants, and, being duly sworn, testified as follows, to wit:

I stated above property has had but a little cash value since I have been in the county. Sales here have been on a credit or to judgment creditors. In 1876 I don't remember any disposition upon the part of parties to buy property for cash. I don't think it could have been sold for cash — 1876 for over $30,000.00 or $35,000.00, but parties buying it on a credit might have agreed to paid more.

(Sign-d) ROB'T E. CRAIG.

1077 At the same place and on the 16th day of November, 1883, came ROBINSON RUDDICK, a witness on behalf of the defendants, —, being duly sworn, deposed as follows, to wit:

My name is Robinson Ruddick; age, 48 years; I reside in Chicot county, Arkansas; occupation, a clerk at this time in a mercantile establishment.

I was acquainted with Mr. W. H. Todd in his lifetime, and am acquainted with Capt. Smith. They owned the Yellow Bayou plantation—that is, Mr. Todd owned the Yellow Bayou place & he and Mr. Smith together owned the Bellevue place.

In 1868 I did some work on the Bellevue place for Captain Smith. In 1873 I sold some lumber to Capt. Smith for the use *for the use* of the Yellow Bayou and Bellevue plantations. I sold 25,093 feet for the use of Yellow Bayou; the whole transaction was with Capt. Smith.

1077*a* Joshua Simmons bought no lumber from me. I don't know whether Mr. Simmons was on the place or not. I

brought the lumber from Boliver county, Miss., and delivered it at the Bellevue Landing to Capt. Smith in the summer, I think, in July, 1883.

These are the only transactions I remember of having in connection with either of the places.

(Sign-d) ROBINSON RUDDICK.

Deposition of Johnson Chapman.

My name is Johnson Chapman; age, 30 years; I reside in Chicot county, Ark.; occupation, a planter.

I was acquainted with W. H. Todd in his lifetime, and am acquainted with Mr. B. H. Smith.

I know that Mr. Todd owned the Yellow Bayou plantation, and I think owned an interest in the Bellevue plantation, in Chicot
1078 county. I live on old River Lake, on the Red Reuben plantation, which adjoins the Yellow Bayou and Bellevue plantations; have lived on the Red Reuben plantation all my life. I have been in charge of the place since about 1872 or 1873; I don't remember now. I know Mr. Edwin Mole by sight, who lived on the Yellow Bayou plantation.

While Mr. Mole was on the Yellow Bayou place, 1876, a lot of the waggons from the Yellow Bayou plantation were sent down on the Red Reuben plantation and were hauling away rails. I had the teamsters arrested. I am not certain, but I think the teamsters stated that they were sent there by Capt. Smith. I know I wanted to have Capt. Smith arrested. Capt. Smith represented Yellow Bayou plantation in the trouble about the rails. I did not know Mr. Mole in the matter. Capt. Smith controlled the waggons and employ-d counsel to defend the teamsters. Capt. Smith found the rails in the wood and directed the teamsters to haul them
1079 away, so the teamsters informed me; Capt. Smith seemed to have charge of the whole matter.

Cross-examination:

I don't know who instructed the teamsters to go after the rails any further than what the teamsters told me, that Capt. Smith had told the teamsters to go for the rails. The teamsters had been hauling rails for several days before I found it out. After the teamsters were arrested Capt. Smith employ-d counsel to defend them and looked after the suit.

(Sign-d) JOHNSON CHAPMAN.

Deposition of Joshua Simmons.

My name is Joshua Simmons; age, 43 years; I reside in Desha county, Arkansas.

I was acquainted with W. H. Todd in his lifetime, and am acquainted with Mr. B. H. Smith.

1080 Mr. Todd was said to have owned the Yellow Bayou plantation and one-half of the Bellevue plantation.

I was the manager and had control of the Yellow Bayou plantation. I went there in April or May, 1873, and remained there until the last of December, 1874. I was employed as manager by Mr. Todd. I went there to repair a gin-house in April or Nov., 1873, and to take charge of the place. In 1874 I had exclusive charge of the place—1874. In 1873 I had exclusive charge of the place as well as repairing the gin.

As manager of the place, I reported to Mr. Todd.

When Mr. Todd was absent from the place I corresponded with him by letter and received letters from him.

I have part of the letters that I received from Mr. Todd. The balance of the letters were burned up with my trunk in Arkansas City.

1081 I recognize the three letters dated Aug. 25th, 1873, & June 11th, 1874, & June 21st, 1874, respectfully, as letters received from Mr. Todd in connection with my business as manager, and identify the same by my signature endorsed thereon, marked Exhibit "A," Ex. B, & Ex. "C," respectively, and make the same a part of my deposition.

I have ginned cotton raised on the Yellow Bayou plantation while I was there, and generally delivered the cotton on the bank of the Miss. river at the Bellevue Landing under instructions from Mr. Todd, who instructed me to ship the cotton to Messrs. Jurey & Gillis, to his credit, if the boat was then at the landing, and, if the boat was not there, to Capt. Smith, — would attend to shipping the cotton, and was to notify Capt. Smith that the cotton was at the landing. I delivered some cotton to Mr. Cohen at Luna to pay debts of Mr. Todd to Mr. Cohen. I delivered the cotton under Mr. Todd's instructions.

1082 Cross examination:

My contract for 1872 with Mr. Todd was written. I have not got it; it was burned with my other papers in Arkansas City.

The substance of the contract with Mr. Todd for 1873 is as follows: I was to go there to repair the Yellow Bayou gin—put it in running order. After he employed me to repair the gin he came to me the second time about taking charge of his place and gave me a list of the household furniture in his house there on the Yellow Bayou. I was to repair the gin-house for $800.00; it was specified in the contract that there was to be no new sills in the gin-house.

I don't know whether the contract for managing the place was in the written contract or not.

Please state what the contract for so repairing the gin was.

1083 I was to get $800.00 to put the gin in running order and cotton press. There were to be no new sills under my contract. I was to get $400.00 in cash when the gin was completed and $400.00 more on or about the 1st day of January; this was the contract, as well as I can remember.

Q. What was your contract for managing the place in 1873, and at what time was that contract made?

Ans. The contract was made some time about April or May, 1873. I was to get $300.00 to stay on the place and manage it, with the privilege of working on other places around in the neighborhood, when I could come home at night and weigh out rations or do any other business on the place, such as weighing cotton, dividing cotton between the hands and Mr. Todd. I had to keep the books.

Q. When did your services as manager commence?

1084 Ans. When I first went on the place, in April or May, 1873.

Q. Did you have the exclusive management from that time on?

Ans. I did.

Q. When did you commence work on the gin-house?

A. As well as I can remember, it was the last of May.

Q. How long had you been in charge of the plantation before you commenced work on the gin?

A. Six weeks or a month, as well as I can remember.

Are the letters you have filed the only ones you now have received from Mr. Todd?

They are.

1085 When you went to Yellow Bayou was there any of the crop of 1872 on hand? And, if you answer nay, please state what disposition you made of it.

As well as I remember, there was cotton which had never been ginned up. As well as I can remember, some of the cotton was haul-d to the Bellevue gin, and the balance was haul-d to the Yellow Bayou gin when it was gotten in running order. This cotton was then hauled to Bellevue Landing.

Did you have the cotton referred to ginned on the Bellevue gin, and did you divide it with the hands?

I did not. I had nothing to do with that cotton. Mr. Todd had arranged with Mr. Smith to have that cotton ginned and divided, so he told me, at Bellevue.

Did you gin any of the 1872 crop at Yellow Bayou?

1086 As well as I remember, I did.

Whose cotton was it, and what did you do with it?

I think the cotton belonged to what they called the Henry Turner squad. I divided it and took Mr. Todd's part out of it. As well as I can remember, Mr. Cohen got it for supplies furnished the Yellow Bayou place under Mr. Todd's instructions.

What was your contract with Mr. Todd for 1874?

I was to stay on the Yellow Bayou plantation in 1874 for $60.00 a month, with the privilege of working on any place around so that I could go home every night. This contract was to have been written, but was not.

Did you have exclusive control of the Yellow Bayou plantation in 1874?

I had exclusive control of the Yellow Bayou plantation as an agent in 1874.

1087 After you left the Yellow Bayou plantation in 1873 was there any alteration made — contract for the repair of the gin-house?

When the contract was written it was specified that there was to be no new sills. When I raised the gin-house off of the old sills they were perfectly rotten. I wrote to Mr. Todd that the sills were rotten. He wrote me to get Capt. Smith to look at the sills, and, if they would not answer, any arrangement he made with me to put new ones under would be satisfactory to him.

Have you got the letter of Mr. Todd referring to the sills?

I don't think I have.

What arrangement did you make with Capt. Smith about putting new sills under the gin-house?

Mr. Smith came over to the Yellow Bayou gin. I showed him how the sills were rotten. I told him I would put new ones
1088 in for one hundred dollars (100). He told me to go ahead and do it, and that Mr. Todd would pay me for it. I was to and did get out the timber for the sills.

What were you doing from the time you discovered the sills were rotten until you arranged with Capt. Smith to put new sills under the gin?

I was doing other work on the gin.

In 1873 did Mr. Todd supply the hands rations?

Some were furnished by Mr. Todd and some of them by Mr. Cohen; I don't remember; I don't remember the names of any of the hands furnished by Mr. Todd; the books will show.

Can you mention what neighboring plantations you worked on while you were managing the Yellow Bayou plantation?

I worked on the Bellevue—the only one I worked on.

1089 How long were you engaged on the Bellevue plantation.

As well as I can remember, I worked *I worked* on the Bellevue some 25 or 30 days in all. I am a ginwri-ht and carpenter, and the work was of that character.

The paper marked Exhibit "D" is now presented to the witness and — is asked if the same is his receipt.

To the best of my ability, it is not.

Please examine the paper marked "E" and state if that is a receipt given for work done by you on Bellevue.

I recognize the paper marked "E" as a receipt for the money paid and identify the same by my signature.

Please examine Exhibit "D" and state if the signature attached thereto is your signature.

1090 I have examined it and don't believe it is.

Who paid you for your work on the Yellow Bayou gin?

Mr. Todd told me when he left that he had made arrangements with Capt. Smith to pay me $400.00, which would be the first payment, when the Yellow Bayou gin was completed. When I started the Yellow Bayou gin I went to Capt. Smith, on Bellevue plantation, and he gave me a draft for $400.00. When Mr. Todd came down, some time in January, he gave me a draft for $410.00. He gave me his note for $390.00, as well as I can remember, for services and gin building, which note was afterwards paid in our settlement, in 1874.

I recognize the paper marked Exhibit "F" as a receipt as therein purported, and identify the same by my signature, and make the same a part of — deposition.

1091 Who was on the Yellow Bayou when you went there?

Between 125 &150 negroes; there was nobody else there.

From whom did you get the keys?

I think that Capt. Smith sent me the keys. Mr. Todd told me that Capt. Smith would send me the keys, and I think he did.

Where did you get the lumber for the Yellow Bayou gin?

I got it at Bellevue Landing. Mr. Todd had made arrangements with Mr. Vicory W. Reddick to furnish it.

Did you ever have any conference with Capt. Smith about the work on the Yellow Bayou gin?

Not that I remember of, excepting as to the sills and the payment of the $400.00 that I was to get when I got the gin done. If I had any other I don't remember it.

1092 Did Capt. Smith get any feed for the Yellow Bayou place from Mr. Cohen while you were there?

I don't remember.

Did you ever apply to Capt. Smith to get you feed for the Yellow Bayou place?

I don't remember.

Did you ever get any feed from Mr. Cohen for the Yellow Bayou place?

I did.

What mechanics assisted you in the work on the Yellow Bayou gin-house?

I had no first-class ginwrights to help me; but did have Mr. Eli Jeter, John Jeter, Russell Ward, young Tommy Hunnicut, Josh Hunnicut, John Trigleth; those are *are* all I can remember of now.

Did not the fence on Yellow Bayou wash away in 1874.

1093 A part of the lower string.

Who had it put —?

I did, with the hands on the *hands* place; the rails were split by some servants at my request, under directions from Mr. Todd.

While working on the Yellow Bayou gin-house did not you recognize Capt. Smith as the overseer of the work?

I never was directed by Mr. Todd to obey any orders from Capt. Smith, except that Mr. Todd wrote me that whatever arrangement I made with Capt. Smith with regard to the gin sills would be satisfactory.

Were you not absent from Yellow Bayou, while employed there, some two or three weeks at your own place on Gum Ridge?

I was not.

1094 Was any of the property on the Yellow Bayou place levied on while you were there?

There was 20-odd of the mules on the place levied on while I was there.

How did you get the mules released?

I wrote to Mr. Todd that the mules had been levied on. He

wrote back to me that he would make arrangements with Capt. Smith so that the mules would not be taken off the place.

Have you got that letter from Mr. Todd?

I have not unless "A" is specified in some of the letters already filed.

Was it not through the agency of Capt. Smith that the mules were released?

Not that I know of.

1095 Did you build or repair any houses at Luna in 1873?

When I first went to Yellow Bayou I worked a few days at Luna before I commenced work on the gin, but I went to Yellow Bayou every night.

When and how much cotton did you deliver to Mr. Cohen?

I delivered him some cotton, I don't remember how much, in the fall of 1873—some that Mr. Todd said he owed. I think of the crop of 1872 I sold him cotton for supplies — 1874; several times he wrote me when I got out of supplies to take cotton and sell it to buy supplies.

Have you any of the letters giving you such directions?

I have not without these matters are stated in some of the letters already filed.

1096 Under your contract did Mr. Todd supply your family?

No, sir; he did not. I furnished myself all the time.

Where did you get the rations issued out on the Yellow Bayou place?

I got it mostly from Luna; some of it came from Cairo and elsewhere. Mr. Todd said he sent it to Cairo. Some of the corn I bought from a flat-boat.

Mr. Todd gave me a blank draft. When I measured up the corn I filled out the draft and paid for the corn. I filled the amount in the draft, and also the man's name who I bought the corn from. The draft was signed by Mr. Todd and drawn on Messrs. Jury & Gillis.

Did Capt. Smith ever visit the Yellow Bayou gin while it was being repaired?

1097 I don't remember that he ever was there only when I sent for him to come to look at the sills.

Did you pay the taxes on the Yellow Bayou plantation?

I did not; was not authorized to pay the taxes.

And furthermore the deponent sayeth not.

(Signed) JOSHUA SIMMONS.

1098 *Exhibit "A" — Deposition of Joshua Simmons.*

PHILADELPHIA, *Aug. 25th*, 1873.

DEAR SIR: I have rec'd one letter only since you have been on my place. I would only have learned that the gin was undergoing the contract repairs through Capt. Smith. It seems to me you are the right person to let me know that you are doing the job, and when it will likely be done; and in view of it, as to its completion, &c., please tell me something about it, and, further, about the old

gin-stands now standing in the old house. 1st. Could I not get new Silman saws and brushes and the necessary ap-aratus to run them in and do just as well as to get new one-, new 80-saw gin-stand—indeed one of the stands was nearly new and appeared much rusted—might, I think, be repaired; you will please give me your views on the subject. You will call on Capt. Smith and consult him and fully examine that pair of burrs that was torn out of the brick mill, and see if they cannot be rig-ed up on the stand now occupied by the Staub mill, and, if they can be used advantageously by steam-
1099 power, then and in that event I would prefer removing the Staub mill to the Yellow Bayou gin, as the burrs now laying useless would be to- heavy for the horse-power at the gin, and if they can be rigged up at the steam gin are far superior to those with Staub mill. Please attend to this at once and write me the result, and if Capt. Smith declines a change, then can those burrs be used in frame gin by 6 horses? If so, I would prefer them by all odds. Capt. Smith wrote me immediately after I left the house had been entered and sheets and blankets taken and some things returned. You will please tell me when you reached the place how many sheets and how many blankets you found there. My object is to learn how many I will have to provide for my family when I come in Oct., and any other suggestion you may think I should know. Capt. Smith says, after 4 weeks' hauling, Anthony has his cotton hauled; will gin his crops this or next year, and please tell me the general news of each man's crop of corn or cotton, and the general news of the place. He speaks of mules looking badly and Harry
1100 Cohen writes me of enormous bills for feed, twice the amount I laid in the year before, and stock looking tolerably well then and badly this season; and in your letter you speak irregularly of feed being furnished. How is this? Tell me in your — immediately, in reply, when you will have the job done. Will it be by the 20th Sept. or 1st Oct., or nearly as you can come to it? It is not so very material, only to have the gin-stand down in time, and — on other matters in which you have an interest.

Yours,

(Signed) WM. H. TODD.

Exhibit "B" — Deposition of Joshua Simmons.

PHILADELPHIA, *June 11th*, 1874.

DEAR SIR: This is the 1st time to your — since I ship-ed aboard the Capital City for Vicksburgh. We have had a safe trip and a quick one, but $10.00 each more expensive than by way of Memphis. All are well except myself; I have been quite miserable for a day or so. Times are tight in money matters here. The weather was unusually hot for several days after our arrival here, but has changed to
1101 moderation, owing to storms in New York, tho' we have had no rain here yet. We found the season dry all through Miss. and Tenn., and the crops backward—all suffering for rain—and I have no doubt of a short crop of every description. The wheat and grass crops look well in Ky., Ohio, & Penn. — we passed. Waters all

low. We got here after the 1st month set in, and I will have funds early in July, at which time I will fill and express your bill. What little I had I had to send to the mouth of Ohio for feed. If at any time you seem short of feed, which I hope you will not, get it from Cohen, and I will pay him the cash on receipt of the fact. You will please write me once a week, if the skies fall, and direct to cor. Montgomery avenue and Gratz St. Tell me all about each squad, what they are doing, who is in the best condition, who works and who fails, and if Sevile has gone with Uncle Billy, &c.; and, as funds will be much use to us, try and get Anthony's cotton haul-d and ginned as best you can, and if it costs me a little more, so be it. I need all the funds I can command. Do not — a day pass before moving the bill to the — that Capt. Smith may ship it if not done. I have asked
1102 Capt. Smith to tell and arrange with Cohen to put at Mrs. Chapman's the lumber needed for the fence and the cotton-house. Send Capt. Smith the bobtail cow & calf, as he has none, to give him milk. You are due me a letter. Now, I hope you will tell me everything, great and small, and, above all, see to feeding the mules regularly; it is very important indeed, as you said. Tell if the woods and roads have dried up so as to allow any rails to be hauled, and if the rails are all to be found in the neighborhood. From a line Capt. Smith wrote to Minnie it seems desperate cuts have been made in the fields in Bellevue. So far as my opinion goes, it will be worth $5,000.00 *be*lone to have many pools of lasting water on the place, along the line of the levee, for watering stock—far more than the cost of repairing of the levee. Some of the marshes are perhaps larger than desirable, but still we cannot always have things as we want them. As I often said to you, Mr. Simmons, if you are determined to do a thing it will be done, so I rest and feel well assured you will make me a crop, for I
1103 think I saw the element in you before my departure. As I stated to you, I do not wish my mules low in flesh as — they were rode from post to pillow, unless you see the necessity and admit it, nor do I want horses rode to death. Jennie, Mrs. Smith, and Daisey are well; Mr. Kirk, who come to see us often, *are* well, and join me in respects to you and family. I hope your dear little children and wife are well and feel at home. Write me often, and I will attend to your bill in a few days.

Yours truly,

(Signed) WM. H. TODD.

P. S.—Do not get a carpenter until after the lumber is on the ground, and then get one as cheap as you can.

Exhibit "C" — Deposition of Joshua Simmons.

PHILADELPHIA, 21*st June*, 1874.

DEAR SIR: Yours for the 13th inst. came safe to hand yesterday, giving me information of 4 minor things: 1st, no feed; 2d, mule dead; 3d, Flower cow dead; James Batts fined $17.50. In
1104 answer to the 1st enclosed is the bill of Halladay & Brother

of 9th to ship fuel; the- made no reply, only Batts got what he righ-ly deserved, a fine. The feed question was attended to as soon as I got home on the 4th; transmitted funds for that purpose; some difficulty in the Anchor Line arriving and departing may have caused delay. I knew Halliday was the agent at the levee and always keeps very large stores of feed and on the boat ready to ship; hence I made the order for speed, as my route via Vicksburgh was not expected and delayed the shipment a day or so. The dead mule cannot be brought to life, so it must pass the *born*. But your letters are crusty and short. Now, I shall expect you to answer me every word, and in the 1st place tell me how is the Ellis & Moores, Branden C. White, Greens, Beiny & Sons, Lavilia, Batts & Mitchell, John White, Hannibal & Hubbard, & Anthony's squads doing there—each renter one by one, and other incidents. What have you heard about the fence, and can any hauling be done? How is
the mud in the locality of the rails; are they much scattered
1105 after the flood left? All these subjects are at your command, and
I ought to know each man's prospects and his movements. I now take it for granted the feed has all come right to hand, and I will see that more will come in a few days with your bbl. meat & flour, as you say nothing of the meat or meal being out or how much is likely to be needed. Did Hannibal & Hubbard get Cohen to supply them? What was done with the ground old John left planted? I am here and have been very sick indeed, and am now better, but feeble, and you know I feel much interested in my affairs down South, and very much depends on yourself; and I felt mortified that you made no effort to get feed from Cohen, nor yet mentioned it to Capt. Smith to fill up an accidental failure; or, if you did make any effort, you omitted to state it, only you said you had been working mules overwork on grass; that ought not to have — done; rather take a bale of cotton or anything else and sell it. In God's name, I hope
it is the last time that a short crop *crop* will be attributed to
1106 failure in feed. As far as I am concerned *as far as I am concerned* I will put a stop to the complaint if shipments will only reach this place, and I ship, as you say, hereafter to Luna Landing, and you shall have no cause to complain, and will in a few days send your bill of goods. I have been to-day unable to go out and attend to any business. Since the 4th or 5th, when I remitted to Cairo, a violent pain in the back and loins & dumb-chills took me, and I took it for granted it was the exposure on the levee and feet so often wet during the overflow. The rest of the family who came with me have been and are well. Mr. Kirk escaped the night I lay on the river. Before leaving the mosquitoes worried me awful and caused me to go either down or up. Jinny joins me in respect to yourself & family.

(Sign-d) W. H. TODD.

P. S.—Try and get Thurman's cotton ginned soon.

1107 *Exhibit "D" — Deposition of Joshua Simmons.*

$122.00. BELLEVUE, *June 6th*, 1874.

Received of Benj. H. Smith a sight draft on Jury & Gillis for one hundred and twenty-two dollars for labor to date.

(Sign-d) JOSHUA SIMMONS.

Exhibit "E" — Deposition of Joshua Simmons.

Wm. H. Todd & Smith to Joshua Simmons, Dr.

For work on Bellevue gin, finished on 23d of September, 1874:

To 18½ days work by J. Simmons, at $4.00 per day	74 00
" Jno. Trigleth, 20 days work, @ 3.00 a day	60 00
" Russell Ward, 9½ days " " 2.50 " "	23 75
" Thos. Hunnicut, 10 days work, " " "	25 00
	$182 75
Received on the above account (cash)	62 75
	$120 00

Received pay in full,

(Sign-d) JOSHUA SIMMONS.

1108 *Exhibit "F" — Deposition of Joshua Simmons.*

$400.00. BELLEVUE, *Sept. 30th*, 1873.

Received from Benj. H. Smith his draft at sight on Jury & Gillis for four hundred dollars as the first payment due from Wm. H. Todd for repairs on Yellow Bayou gin-house.

(Sign-d) JOSHUA SIMMONS.

Deposition of Russell Ward.

RUSSELL WARD, a witness on behalf of the defendants, at the same place and on the 23d day of Nov., 1883, being duly sworn, deposed as follows, to wit:

My name is Russell Ward; age, 63 years; I reside in Chicot county, Arkansas.

I was acquainted with Mr. Wm. H. Todd in his lifetime, and I am acquainted with Capt. B. H. Smith.

I am acquainted with Joshua Simmons.

1109 I have worked with Mr. Simmons on the Yellow Bayou gin; this work was done — 1873.

Yellow Bayou plantation at that time belonged to Mr. Todd. Mr. Todd was not there when the work on the Yellow Bayou gin was going on.

Capt. Smith represented Mr. Todd while the work was going on. He was called the boss.

Capt. Smith was there at the gin every day while the work was going on. I don't think he ever missed a day. I was there 37½ days at work on the gin.

The work on the gin was done under directions from Capt. Smith. Capt. Smith gave directions about the work—directed new sills to be put under the gin, for which he, Mr. Simmons, was to receive $100.00 in addition to the amount for other work of repairing the gin.

1110–11 So far as I know of the management of Yellow Bayou by Capt. Smith, I only know that he came to the gin one morning and gave orders to stop all fire hunting in Yellow Bayou field.

I helped Mr. Simmons fix the shafting in the Bellevue gin after the overflow went down in 1874—9 days. Capt. Smith was there nearly every day while the work was going — and seemed to be superintending it. I was paid for my work by Mr. Simmons. I got $2.00 per day on the Yellow Bayou gin and $1.50 per day for work on the Bellvue gin.

Cross-examination:

Capt. Smith gave me as a reason why he stopped the firing, hunting, in the Yellow Bayou field that the mules were getting wild in the field; the fences were bad. I understood him to refer to the Yellow Bayou mules, because my horse run with them and they were in the field nearly every night, though I don't —

1112 whether he meant the Yellow Bayou or the Bellevue mules.

And further the deponent sayeth not.

(Sign-d) RUSSELL WARD.

L. H. SPRINGER, a witness in behalf of the defendants, at the same place and on the 23rd day of November, 1883, after being duly sworn, testified as follows, to wit:

My name is L. H. Springer; age, 52 years; I reside in Lake Village, Chicot county, Arkansas; occupation, a lawyer.

I was acquainted with Mr. W. H. Todd in his lifetime, and acquainted with Mr. B. H. Smith.

I am a party defendant to this suit.

I am acting in the capacity of administrator of the estate of W. H. Todd. I gave bond, made the affidavit, and took out the letters on the 4th day of August, 1879, and posted the notice required

1113 by law notifying creditors that letters had been taken out by me. I did this in full compliance with section 60 of Gantt's Digest. The judgements on which this suit is founded in favor of Thos. H. Allen and Allen, Nugent & Co. have never been presented to me as administrator for allowance, nor any one of them.

As administrator of said estate, these claims have never been exhibited to me for allowance.

About 3 years ago I collected over $1,000.00 of Capt. Smith. I made the collection as att'y for J. S. Whittaker, as executor of H. F. Walworth, deceased, of purchase-money due from Wm. H. Todd & B. H. Smith to said estate on the gin tract of land on the Bellevue plantation.

I have been paying the taxes on Yellow Bayou and Bellevue plantations for a good many years. I always communicated with

1114 Capt. Smith about the taxes—letting him know the amount. I think I commenced paying the taxes on the Yellow Bayou and Bellevue places as early as 1872. I continued paying the taxes on Yellow Bayou until Mr. Halliday commenced paying, and paid on the Bellevue place until the present time.

Cross-examination:

I took out letters of administration on the estate of Wm. H. Todd at the instance of Mr. B. H. Smith first, and was also on the same day spoken to about the matter by Major Robinson.

I never heard that there was a will of Mr. Todd until 3 days ago, when Gen'l Reynold's mentioned it to me. The will has not been probated that I know of.

I have been twice summoned as administrator by the plaintiff in this suit in regard to the matters at issue in this suit
1115 and *and* in a suit of which this is a renewal.

When I first commenced paying the taxes Capt. Smith and Mr. Todd both came to me together and made an agreement with me about paying the taxes. I paid the taxes that year under the agreement and have continued to pay them since that time under said agreement, Capt. Smith furnishing the money, I furnishing annually the amount and kind of funds. I cannot recall that I was informed that there was a will made, notwithstanding the application shows that Mr. Todd died making a will and that the bond indicates that I took out letters, with the will annexed, the blanks in both papers being in my handwriting.

1116 Re-examination:

I never had any money or personalty as assets belonging to the estate of Wm. H. Todd. The claims of B. H. Smith, James F. Robinson, Wm. P. Halliday, and J. R. Martin are the only claims allowed against *against* said estate.

And further deponent sayeth not.

(Sign-d) L. H. SPRINGER.

ELIZER JETER, a witness on behalf of the defendants, at the time and on the 26th day of November, 1883, after being duly sworn, deposed as follows, to wit:

My name is Elizer Jeter; I reside in Chicot county, Arkansas; aged 53 years.

I was not acquainted with Wm. H. Todd; I knew him when I saw him; I am acquainted with Mr. B. H. Smith.

1117 I did some work on Yellow Bayou plantation in August, 1873. I worked on the gin then. I was employed by Mr. Simmons.

Mr. Simmons employed me and said he was doing the work for Mr. Todd by contract.

The first time I ever saw Mr. Smith to know him was when I was at work on the Yellow Bayou gin.

He came there and asked a great many questions about the work. I asked Mr. Simmons who he was.

Mr. Simmons told me he, B. H. Smith, was the superintendent of Yellow Bayou and Bellevue plantations, and I think he also told me he was the son-in-law of Mr. Todd.

He made suggestions to me; he would like good, sound timber put in the work.

1118 He was on the work some days as often as twice a day and some days was not there at all.

Mr. Todd was not there while I was on the work. I worked on the gin-house 12 days.

And further the deponent sayeth not.

(Sign-d) ELEAZER JETER.

Deposition of C. W. Sanders.

My name is C. W. Sanders; age, 45 years; I live in Chicot county, Arkansas.

I was acquainted with Wm. H. Todd in his lifetime. I am acquainted with Mr. B. H. Smith.

I know of W. H. Todd owning Yellow Bayou plantation and Todd & Smith owning Bellevue.

I lived on plantation about 5 miles from Yellow Bayou since 1848.

1119 I merchandised at Luna from 1869 to 1875. The style of the house with which I was connected was J. McMurray & Co. We did business with both the Yellow Bayou and Bellevue plantations, supplying some hands on each.

We collected our bills from the hands on the cotton, and collections were almost entirely made by Capt. McMurray, my business partner. I was with him once or twice when collecting. I was at the gin-house when cotton was being divided more than once. I think I was at Yellow Bayou once at the division of cotton.

Capt. Smith divided the cotton with the hands in one instance; I can't remember of any other.

I have no knowledge of any one else ever dividing any cotton with our house on those plantations excepting Capt. Smith. Capt. McMurray always made the settlements with the house.

1120 I frequently rode up to see Capt. Smith about the division of cotton with the hands that we were supplying. We never did supply many hands on Bellevue; it was principally on Yellow Bayou.

The hands would sometimes bring us statements of division of cotton made by Capt. Smith with them.

I suppose- from these circumstances that Capt. Smith was in control of the business on those plantations.

Cross-examination:

The division I recol-ect of was of the Yellow Bayou cotton at the Bellevue gin, in 1872, as being divided by Capt. Smith.

The divisions of cotton which I refer to were at the Bellevue gin.

I don't remember of having ever received any cotton from the Yellow Bayou gin through the division by Capt. Smith. The cotton I got was divided when I got there. I don't *I don't* know who divided it.

1121 Mr. Todd furnished me with the number of bales and the weights at his house on Yellow Bayou; we went to the gin in an flat-boat.

Re-examination:

In the absence of Mr. Todd from Yellow Bayou plantation, when we wanted to make collections from hands due us on Yellow Bayou or Bellevue, I always applied to Capt. Smith to know when these hands would gin. I never had any business with any of the men on *on* Yellow Bayou—I mean Mr. Mole, Mr. Kirk, & Mr. Simmons—that I recollect of.

Capt. Smith came to our store and told us that the cotton that I *bouted* from Yellow Bayou was really for us; this was the only lot of cotton I ever *bouted* from them.

(Sign-d) C. W. SANDERS.

1122 *Deposition of S. H. Holland.*

My name is S. H. Holland; I reside near Dermott's station, in Chicot county, Arkansas; age, 41 years; occupation, a farmer.

I was the sheriff of Chicot county from November, 1874, until September, 1882.

As such sheriff I had in my hands an execution issued upon a decree of the Chicot circuit court — favor of Wm. P. Halliday against Wm. H. Todd.

The style of the cause as indorsed on the back of the execution was Wm. P. Halliday against Emma J. Wright, as executrix, &c.

This execution was levied upon the Yellow Bayou plantation. This property was sold under said execution on a credit of three months and was bought in by Mrs. Eveline E. Bolivar, who gave a bond for the purchase-money, with Wm. H. Todd as surety thereon; the bond bears date April 6th, 1876.

I had an execution in my hands issued upon the above-mentioned bond, and it was levied upon the same property. Wm. P. Halliday was the purchaser of the property under said execution. Another execution was issued upon said bond and levied upon a part of the Bellevue plantation. The property was sold and bought in by Benj. H. Smith.

As such sheriff I had in my hands an attachment issued on the 4th day of August, 1886, in the suit of B. H. Smith against

1123 Wm. H. Todd. I made the levy of this attachment myself in person.

The levy was made on 25 bales of unginned cotton as estimated in pens, in which Mr. Todd's interest was 9 bales, and on unginned cotton in the fields, estimated to be 54 bales, of which I knew Mr. Todd had a $\frac{1}{4}$ interest in 14 bales and a $\frac{1}{2}$ in 40 bales. There was estimated to be 37 bales in the fields, in which I did not know what interest Mr. Todd had.

This attachment was also levied upon 12 mules, 1 pony, 1 colt, 1 jack, 3 cows, 3 calves, 2 sheep, and a lot of farming utensils. This property was all left in charge of Mr. Mole as custodian, and constituted all of the personal property belonging to Mr. Todd that I knew of or that was pointed out to me. Mr. Mole pointed out all of the property levied upon by me under said attachment.

I went to the place and told Mr. Mole my business, when he surrendered and pointed out everything on the place to me. Captain Smith urged — to levy upon all of Mr. Todd's property that I could find. I then went to the Yellow Bayou plantation because I knew of no other property belonging to Mr. Todd.

All of the cotton levied upon was released under instructions from the plaintiff, B. H. Smith. I then levied said attachment on the following-described lands, viz.:

1124 Undivided one-half section five, undivided one-half of the west half section eight, undivided half of the west half of the southeast quarter sec. eight, undivided half of the south half of the south half sec. four, undivided half diagonal south half of the north half of the south half sec. four, all in township fifteen south, range one west; also all fractional section twelve east of west bank of Yellow Bayou.

I don't remember who had charge of the property after Mr. Mole left the place, if he left before the sale.

The levy on the personal property was made on the 8th day of August. The cotton was released December 19th, 1876, and the attachment — on the land the same day is my impression.

I retained the writ until about the time for the meeting of the court, as was my custom, as settlements and adjustments of controversies were frequently made.

I think that Captain Smith requested that the property be left in the hands of Mr. Mole as custodian after the attachment.

(Defendant objects to all of the statements of the witness in regard to the substance of the executions in favor of Wm. P. Halliday and B. H. Smith in regard to the levy and sales thereunder and the returns upon the same as incompetent and irrelevant.)

Cross-examination:

1125 Under the execution issued for the balance of the Halliday decree I levied upon west half section six excepting the west half of the northwest quarter, and also on the west half section seven, all in township fifteen south, range one west, as part of the Bellevue plantation. This execution was levied on the 28th day of August, 1876, and on the same day, under execution issued — favor of McMurray & Co., I levied on the east half of said section six and said section seven, same township and range. I was directed to make the levy upon these lands by the attorney for plaintiffs.

The cotton of Henry Turner, about 8 bales; the cotton of Wm. Turner, about 5 bales; the cotton of John or Jim Webb, about 5 bales; the cotton of Henry Turner and Sam. Wilson, about 20 bales; the cotton of Braden Brown, about 20 bales. I find these lots of

cotton had previously, on the 7th day of June, 1876, been levied upon by attachment issued in the suit of Jurey and Gillis against Wm. H. Todd. These lots — cotton I believe to be part of the same levied upon under the attachment in the suit of B. H. Smith against Wm. H. Todd on the 8th day of August, 1876.

And further deponent sayeth not.

S. H. HOLLAND.

Deposition of B. Brown.

At the same place and on the same day BRADEN BROWN, a witness on behalf of the plaintiff, after being duly sworn, testified as follows, to wit:

My name is Braden Brown; I reside on the Yellow Bayou plantation, Chicot county, Arkansas; aged about 53 years.

1st interrogation. What is your occupation?

Answer. A farmer, raising crops of cotton and corn on the Yellow Bayou plantation.

Int. 2. How long have you lived on Yellow Bayou?

1126 Ans. About forty-one years, including the time of the army.

Int. When did Captain Smith move on Yellow Bayou to live?

Ans. In 1868.

Interrog. When did Captain Smith move to Bellevue to live?

Ans. He stayed there on Yellow Bayou — 1868 and 1869, and in 1870 moved over on Bellevue.

Int'g. What white men lived on Yellow Bayou and managed and had control of the property after 1869 up to 1876?

Ans. After Mr. Todd went to the upper country he left Mr. Scott in charge. After Mr. Scott's time he put in Mr. White; after Mr. White, Mr. Kirk; after Mr. Kirk, Mr. Joshua Simmons; after Mr. Simmons, Mr. Mole; after Mr. Mole, Mr. Moran.

Int. Who was on Yellow Bayou as manager in 1868 and 1869?

Ans. Captain Smith himself was the manager then.

Int. Were these other men that you mention—Scott, White, Kirk, Simmons, Mole, and Moran—managers on Yellow Bayou for Mr. Todd?

(Objected to as leading.)

Ans. Yes, sir.

Int. What were their duties and what did they do?

Ans. Gave orders and commands on the place as an agent would. We had no overseer, but went by an agent.

1127 Int. Was Mr. Todd on Yellow Bayou during any portion of the years mentioned; and, if so, did he take charge of the property when he was there in person, or did he act through his managers?

Ans. When Mr. Todd was on the place himself his orders went and were obeyed.

Int. Was Mr. Todd on the place much during these years?

Ans. About once a year, I think he was.

Int. About how long did he stay?

Ans. He came down in the winter season and stayed until early in the spring.

Int. In Mr. Todd's absence from the place to whom did you and the tenants on the place look as managers?

Ans. To the man who was on the place when he left.

Int. Did you look to these men, Scott, Kirk, White, Simmons, Mole, and Moran, as managers under the instructions from Mr. Todd?

Ans. I did to all of them except Mr. Moran, and Mr. Todd was not there to give any instructions about Mr. Moran, and I look to him without any instructions.

Int. Were there any other managers on Yellow Bayou during these years?

Ans. No, sir; none that I can recollect.

Cross-examination:

1st Int. What time of the year 1868 did Cap. Smith move on Yellow Bayou?

Ans. 1st. I don't remember what time of the year it was.

2nd. Was it the spring, summer, fall, or winter of that year?

Ans. He took possession in the winter, after Christmas.

3rd. How do you know it was after Christmas, in the winter of the year 1868?

1128 Ans. I know it was after Christmas because we were put to cleaning up before planting time.

4th Int. Who was the agent on Yellow Bayou after Capt. Smith moved on it?

Ans. Cap. Smith was the agent after he moved on the place.

5th Int. Was there any other agent on the place after Cap. Smith went there and before he moved on Bellevue?

Ans. The first year Cap. Smith was there; the next year he went North and left a man named Wilson there while he was gone.

6th Int. Have you had any conversation with anybody in regard to the testimony you would give in this case?

Ans. The only one I have talked to about it — Gen. Reynolds, since I came here this morning.

7th Int. How did you happen to be here this morning?

Ans. I was notified by Mose Thomas.

8th Int. Did you have any conversation with him about the case?

Ans. Nothing more than that the General told me to come down.

9th Int. What time did Cap. Smith leave Yellow Bayou to go over to Bellevue to live?

Ans. The latter part of January or the first of February, 1870.

10th Int. In what year did Mr. White go on Yellow Bayou?

Ans. It was in 1871; if that is not it, it is close to it.

11th Int. What time did Mr. Mole go on Yellow Bayou?

Ans. He went there in 1876—the Centennial year.

12th Int. What time did Mr. Simmons go on the Yellow Bayou?

Ans. In the year 1874, if I remember right, during the high water.

13th Int. What time did Mr. Kirk go on Yellow Bayou?

Ans. In 1875, right behind Mr. Simmons.

14th Int. What time of the year did Mr. Scott go on Yellow Bayou?

Ans. The first time I saw Mr. Scott on the place was just
1129 before Christmas, in 1871.

15th Int. What did he do after going on the place?

Ans. Mr. Todd put him to looking after the mules—doing some carpenters' work.

16th Int. What did he do next?

Ans. Mr. Todd put him in charge of the place when he left.

17th Int. Did he do any carpenter work or any other work after Mr. Todd left it; and, if so, what?

Ans. He did no carpenter work after Mr. Todd left. He took charge of the place as agent, issued out corn for the mules and rations. If I wanted a team or anything I went to Mr. Scott.

18th Int. Did Mr. Scott have charge of the cultivation, the gathering, ginning, and dividing the crop on Yellow Bayou as agent?

Ans. Mr. Scott had charge of — crop until Mr. Todd got back in the winter. Mr. Todd and Harris Cohen divided the crop.

19th Int. How long did Mr. Scott stay on the place?

Ans. He stayed from the time he went there until the fall following.

20th Int. Did he do any other work while on Yellow Bayou or follow any other occupation other than what you have stated?

Ans. No, sir; he did not.

21st Int. What did Mr. White do on the plantation?

Ans. He was agent.

22nd Int. What were his duties as agent?

Ans. He rung the bell for dinner, rode around the place about twice or three times a day, and instructed the hands what to do, as an agent had a right to do.

23rd Int. Where did Mr. Scott go when he left Yellow Bayou?

Ans. I don't know where he went to. He left the place.

24th Int. Did Mr. Scott teach a school on Yellow Bayou?

1130 Ans. He did.

25th Int. How long did he teach school?

Ans. He taught until Mr. Todd left.

26th Int. Did he teach in the summer after Mr. Todd left?

Ans. He did not. He had no time to teach; he had to look after the place.

27th Int. Who taught the school the summer Mr. Scott was there?

Ans. I do not know.

28th Int. Did Mr. Scott teach school more than once on Yellow Bayou?

Ans. Not that I know of.

29th Int. What year and what time of the year did Mr. Scott teach the school on Yellow Bayou?

Ans. Mr. Scott taught the school in February or March, up to the time Mr. Todd left, in 1871.

30th Int. Was not the school-house close to your house?

Ans. It was right across the street, about thirty steps.

31st Int. Did he ever teach in any other house on Yellow Bayou?

Ans. Not that I remember of.

32nd Int. Are you positive that Mr. Scott did not teach school during the summer he was on Yellow Bayou and after Mr. Todd left?

Ans. I am positive that he did not.

33rd Int. Do you remember when Mrs. Todd died on Yellow Bayou?

Ans. I remember when she died, but don't remember the year; but it was about July.

34th Int. Don't you remember that Mr. Scott did teach school after Mrs. Todd died?

Ans. No; he was an agent after she died.

35th Int. What year or time of the year did Mr. White go on Yellow Bayou?

Ans. He went there early in the year 1872, as well as I can remember.

1131 36th Int. Did Mr. White do any other kind of work except to act as agent?

Ans. Yes; he patched a hole in the cistern about as big as my hat.

37th Int. Where was the Yellow Bayou crop ginned and divided while Mr. White was there, and who divided it?

Ans. The crop was ginned at the Bellevue gin and divided there by Mr. Todd, Harris Cohen, and Mr. Bryant. Mr. White was not there; he had gone. Mr. Todd took possession of the crop when he came back in the fall and ginned and divided it.

38th Int. Where was the Yellow Bayou crop ginned in 1868, 1869, 1870, 1871, and 1872, and who had it ginned and divided it?

Ans. The crop was ginned on Bellevue for those years. Cap. Smith divided the cotton in 1868 and 1869 and Mr. Todd divided it in 1871 and 1872.

39th Int. Was there any cotton ginned in the summer, of the crop of 1870, 1871, and 1872?

Ans. If there was any cotton ginned in the summer of those years I have forgotten it.

40th Int. Don't you know that you were ginning most of the summer of 1871?

Ans. I disremember; it has slipped my mind.

41st Int. Did not Mr. Todd always tell you that in his absence that Cap. Smith had full control and management of Bellevue and Yellow Bayou, and that anything you wanted you were to go to him for it.

Ans. I never understood it that way at all.

42nd Int. Do you remember of the Yellow Bayou mules ever having been attached while either of the managers you have spoken of were in charge of the place?

Ans. I don't recollect.

1132 43rd Int. Do you remember some of the Yellow Bayou hands being arrested about taking Mr. Chapman's rails while Mr. Mole was there?

Ans. Yes; I heard of it.

44th Int. Do you know how they were defended in the trouble?

Ans. I don't know anything about it.

45th Int. Don't you know that Mr. Mole went to Cap. Smith to see about having the hands defended?

Ans. I heard so, but don't know.

46th Int. Do you remember Cap. Smith taking some Yellow Bayou team from Adam White because he was treating them badly, in 1873?

Ans. I did not see that; I heard of it happening.

47th Int. Did not Cap. Smith discharge Leonard Tripp and Chas. White—two of the Yellow Bayou hands—in 1873?

Ans. I disremember Chas. White being off the place until lately.

48th Int. Do you know of Cap. Smith having discharged any of the Yellow Bayou hands?

Ans. I don't remember.

49th Int. Don't you know that Cap. Smith discharged Mr. Simmons from Yellow Bayou?

Ans. I don't know. Mr. Simmons told me that another man had come down to take his place, but did not say who discharged him.

50th Int. Do you know of Cap. Smith ever having had any levee work or fencing done on Yellow Bayou?

Ans. I remember that Cap. Smith employed two Irishmen to repair Braden's break in the levee, I think, while Moran was on the place.

51st Int. Do you remember that Cap. Smith had any fencing put up on Yellow Bayou?

Ans. I don't know of his having had any fencing put up.

1133 The fence was put up under orders of the man on the place in charge.

52nd Int. Did you ever go to Cap. Smith and tell him that Mr. Simmons had taken a horse and some oats off the place?

Ans. I heard it, but I did not tell him.

53rd Int. Did you know that Mr. Simmons, while living on Yellow Bayou, instead of acting as agent worked as a carpenter on the Yellow Bayou gin?

Ans. I knew that he worked on the Yellow Bayou gin the same year he was agent.

54th Int. Don't you know that he worked on the Bellevue gin the same year he was said to be agent on Yellow Bayou?

Ans. I don't know that he worked on the Bellevue gin. I heard he did.

55th Int. Don't you know that, while you say he was agent on Yellow Bayou, he was off the place working on a house at Luna?

Ans. I don't know that he worked at Luna.

56th Int. Don't you know that, while you say he was agent on Yellow Bayou, he was off the place and working on his own place, on Green Ridge, a good part of the time?

Ans. I know he went to camp meeting; carried a wagon, and was gone about a week. I don't know whether he worked or not.

57th Int. Are you a colored man, and can you read and write?

Ans. I am a colored man, and can read some, but can't write.

And further deponent sayeth not.

his
BRADEN x BROWN.
mark.

1134 *Deposition of Ned Smith.*

At the same place and on the same day came NED SMITH, a witness on behalf of the plaintiffs, and, after being duly sworn, testified as follows, to wit:

My name is Ned Smith. I reside on the Yellow Bayou plantation, Chicot county, Arkansas; aged 72 years; occupation, that of making cotton.

1st Q. When did you first move on Yellow Bayou plantation?

Ans. I moved on the Yellow — plantation in the last winter month in 1840, and have been there ever since.

2nd Q. When did Cap. Smith move on the Yellow Bayou plantation?

Ans. He went there directly after Christmas—I don't remember in what year—and stayed there two years.

3rd Q. Where did he move to from there and where is he now living?

Ans. He moved to Bellevue, where he now lives.

4th Q. Who was the manager on the Yellow Bayou plantation while Cap. Smith lived there?

Ans. Cap. Smith himself was the manager.

5th Q. Who was the manager of the place after Cap. Smith moved to Bellevue?

Ans. Mr. Scott, I believe, was the manager.

6th Q. Who was the manager after Mr. Scott for several years?

Ans. Mr. Kirk; after Mr. Kirk, Mr. Mole; after Mr. Mole, Mr. Moran. Mr. White was there for awhile and also Mr. Simmons.

7th Q. Who put those men on the place as managers and whose employ were they in?

Ans. Mr. Todd put Mr. Scott, Mr. Mole, and Mr. Kirk on the place as managers. I don't know who put Mr. Moran on the place.

8th Q. Did these men all have charge of and manage the place and crops during the years they were on the place?

Ans. They did.

9th Q. Were there any other managers on the place during the time these men were there?

Ans. No; there were no other managers. Mr. Simmons had charge of the place while he was there, as also did Mr. Mole and Mr. Kirk.

1135 10th Q. Who brought you to Yellow Bayou, and were you brought there as a slave?

Ans. Mr. Garner brought me there, and I was a slave at the time and belonged to Mr. Craig.

11th Q. Did Mr. Todd visit Yellow Bayou during the years from 1868 up to the time of his death; and, if so, how long did he remain when there?

Ans. He would come down just before Christmas and remain until about the last of April. He continued these visits until one year after his wife's death.

12th Q. Did other members of Mr. Todd's family live on Yellow Bayou during the time he was on the place?

Ans. At one time two of the girls came; at another two of the boys came, and stayed a right smart while.

Cross-examination:

1st Q. What business did Mr. Scott follow on the Yellow Bayou plantation?

Ans. He built several little cabins on the place for Mr. Todd and taught school one season.

2nd Q. How long did Mr. Scott live on Yellow Bayou?

Ans. I don't know exactly how long he did live there; I think part of two years.

3rd Q. Did he act as agent all of the time he was there?

Ans. No, sir; he taught school one spring and worked at the carpenter's trade in the fall and winter. He was not an agent on the place during this time.

4th Q. Who managed the place during the time he was teaching school and working as a carpenter?

Ans. I don't know who was the manager. I don't think there was much going on.

5th Q. Had Mr. Scott any experience as a cotton planter?

1136 Ans. No, sir; I don't think he had.

6th Q. Who directed the cultivation of the crop while Mr. Scott was —, and where was it ginned, and who divided it with the hands?

Ans. The hands managed the cultivation of their own crops, and when Mr. Todd could not go to the gin he would send some one to have the cotton weighed up and bring the weights to him.

7th Q. Did not Cap. Smith superintend the ginning of the Yellow Bayou cotton that was ginned at the Bellevue gin, and did he not divide it for Mr. Todd with the hands and their merchants, Mr. Cohen and Mr. Bryan?

Ans. Cap. Smith superintended the ginning of the cotton carried over from the Yellow Bayou to the Bellevue gin and divided it for Mr. Todd with the hands.

8th Q. Was all of the cotton raised on Yellow Bayou after Cap. Smith went there up to the time the Yellow Bayou gin was repaired by Mr. Simmons ginned and divided at the Bellevue gin.

Ans. Yes, sir.

9th Q. Do you know whether Cap. Smith, during the time the men you spoke of, Kirk and others, were on Yellow Bayou, had any leveeing or fencing done there?

Ans. I don't recollect Cap. Smith having any work done of that kind.

10th Q. Don't you know that Cap. Smith hired Bob Black — Bob Coleman to haul rails and had the Yellow Bayou fence repaired in the summer of 1874?

Ans. I don't recollect it.

11th Q. Do you remember Cap. Smith, in 1873 and in other years, took teams away from Adam White and others for mistreating mules?

Ans. Yes; I know he did that.

1137 12th Q. Don't you know that Cap. Smith, while these men you speak of—Mole, Kirk, and others—were on Yellow Bayou, discharged from service on Yellow Bayou place Leonard Tripp and Charles White?

Ans. I don't recollect about that.

13th Q. Do you remember of having plows sharpened from the Yellow Bayou place on "Clores Boat," by direction of Cap. Smith, during the time you speak of?

Ans. I recollect carrying plows there and having them sharpened.

14th Q. Don't you know that Cap. Smith discharged Mr. Simmons and put Mr. Kirk in his place?

Ans. I don't know that Mr. Smith discharged Mr. Simmons; Mr. Kirk said he was put there by Mr. Todd.

15th Q. Don't you know that Mr. Kirk was staying on Bellevue and acting for Cap. Smith in getting Mr. Simmons off Yellow Bayou?

Ans. I knew he was there, but don't know what he was there for.

16th Q. Who went on Yellow Bayou after Mr. Scott left?

Ans. Mr. Simmons.

17th Q. How long after Mr. Scott left before Mr. Simmons went on the place?

Ans. I don't know, but in time enough to make a crop.

18th Q. What did Mr. Simmons do on Yellow Bayou?

Ans. He fixed up the gin and did what the others did.

19th Q. Did Mr. Scott, while building houses and teaching school, and did Mr. Simmons, while repairing the gin, act as agent?

Ans. Mr. Scott did not, but Mr. Simmons did.

20th Q. Do you know that Cap. Smith superintended the work on the gin and had new sills put under it?

1138 Ans. Mr. Todd had it done.

— —. Do you know whether Cap. Smith, while work was being done on the gin—whether he stopped fire hunting on the place?

Ans. I don't recollect anything about it.

21st Q. Don't you know that those men you speak of, in the absence of Mr. Todd, went to Cap. Smith for supplies when forage or rations would give out?

Ans. I don't know anything about that.

22nd Q. Did you not help boat a lot of feed or supplies obtained by Cap. Smith for Mr. Mole from Isaac Cohen's store during the high water in 1876?

Ans. I remember help boating some feed and supplies, but don't know who it came by.

23rd Q. Don't you know that during Mr. Todd's absence from Chicot county Cap. Smith superintended his business generally?

Ans. I knew that Cap. Smith attended to the dividing and weighing of the cotton at the Bellevue gin, but his other business I did not know anything about.

24th Q. Don't you know that when the mules were attached while these men were there that they went to Cap. Smith to see about getting them released?

Ans. Cap. Smith was the only one who had anything to say at the time the mules were attached; I think that Mr. Scott was on the place at that time.

25th Q. How often were the mules levied on?

Ans. I think they were levied three times; twice in one year.

26th Q. Who interfered to have the mules released?

Ans. I don't know.

Further deponent sayeth not.

his
NED x SMITH.
mark.

Witness of mark of Ned Smith:
GEO. T. WILKINSON.

1139 *Deposition of Henry Turner.*

My name is Henry Turner; I reside on the Bellevue plantation, in Chicot county, Arkansas; aged, 36 years; occupation, that of making cotton.

1st Q. How long have you lived on the Yellow Bayou plantation?

Ans. I have lived there pretty much all of my life—ever since I was a little boy.

2nd Q. When did Cap. Smith move on Yellow Bayou to live?

Ans. I don't remember the year, but it was the year after Maj. Robinson.

3rd Q. How long did he live on the place, and where did he go to when he left?

Ans. He lived there two years; made two crops there, and then moved to Bellevue.

4th Q. Who was the manager on the Yellow Bayou place while Cap. Smith was there?

Ans. Cap. Smith was the manager himself.

5th Q. Was Cap. Smith the manager after he moved to Bellevue, or were there other managers there?

Ans. Cap. Smith was not. It is so far back that I don't remember who was, but I think that Mr. Simmons, Mr. Mole, Mr. Kirk, and Moran were, but I don't remember any others.

6th Q. Did Mr. Todd come down to the place at any time after Cap. Smith moved to Bellevue?

Ans. He did most every year in the fall.

7th Q. How long would he generally remain before he would return home again?

Ans. Until about March; sometimes not so long.

8th Q. Did Mr. Todd's family come down with him?

Ans. I can recollect that they came down once, and I remember that Richard, his oldest son, came down once; I don't remember any other.

1140 Cross-examination:

1st Q. Are you a colored man, and can you read and write?

Ans. I am a colored man, and cannot read nor write.

2nd Q. When Cap. Smith moved to the Bellevue place what white man went on Yellow Bayou?

Ans. It is so far back that I don't remember what white man went on the place.

3rd Q. Were there not times after Cap. Smith left, between the times when one of the men you have spoken of would leave and others would come to take his place, when there was no manager or white person on Yellow Bayou?

Ans. I can't tell that; I don't remember.

4th Q. When Mr. Scott left was there not a very considerable space of time before any one else came to take his place?

Ans. I remember Mr. Scott was there, but I don't remember the space of time before any one else came to take his place.

5th Q. What was Mr. Scott's business?

Ans. He was bossing around while he was there.

6th Q. Did not Mr. Scott teach school and build houses while he was there?

Ans. He did.

7th Q. Do you mean to say that Scott bossed around while he was teaching school and building cabins?

Ans. While he was teaching school he was manager of the place. I don't think he was managing the place while he was building cabins.

8th Q. Don't you know that Mr. Scott taught school on Yellow Bayou?

Ans. I don't know whether he taught school in the summer or winter, but think it was in the winter.

9th Q. What time of the year did Mr. Scott leave Yellow Bayou?

1141 Ans. I don't know exactly what time; it has been so long I don't remember.

10th Q. What time did White come on Yellow Bayou?

Ans. I don't know what time he came on the place. I know he was there a while.

11th Q. Who superintended and managed the Yellow Bayou from the time Mr. Scott left until Mr. White went on the place?

Ans. I don't know who it was.

12th Q. Did Cap. Smith ever employ you to haul lumber from Bellevue landing to repair the Yellow Bayou gin, and did you haul it?

Ans. I never hauled any lumber to the gin; I hauled some to build houses.

13th Q. Did Cap. Smith pay you for the hauling?

Ans. He did.

14th Q. In what year did you haul that lumber, and who was the manager of the Yellow Bayou place at that time?

Ans. Cap. Smith was the manager. I don't remember the year.

15th Q. Was that lumber that you hauled lumber that Ruddick and Vicory brought down to Bellevue landing?

Ans. I don't know who brought the lumber there.

16th Q. Do you remember hauling lumber to the Yellow Bayou gin from Bellevue landing when Mr. Simmons was repairing the gin?

Ans. I quit drawing after Cap. Smith left Yellow Bayou. I did not haul any while Mr. Simmons was there.

17th Q. Did you ever haul any cotton out from Yellow Bayou after Cap. Smith left Yellow Bayou?

Ans. I hauled some there in Mr. Moran's time.

18th Q. Where was the Yellow Bayou cotton ginned before the gin on that place was repaired?

Ans. It was on the Bellevue gin.

1142 19th Q. Who superintended the ginning of it?

Ans. Cap. Smith.

20th Q. Who divided the Yellow Bayou cotton with the hands and their merchants, Mr. Cohen and others?

Ans. Cap. Smith divided it.

21 Q. Did Cap. Smith then superintend the hauling, ginning, and dividing the cotton raised on Yellow Bayou before the gin on the Yellow Bayou was repaired?

Ans. Yes, sir.

22nd Q. Don't you know that from September, 1871, when Mr. Scott left, until April, 1872, when Mr. White went on the place, that there was no manager on Yellow Bayou, and that Cap. Smith superintended and managed the place during that time?

Ans. I can't recollect it at all.

23rd Q. Don't you remember from December, 1872, when Mr. White left, until July, 1873, when Mr. Simmons went there, that Cap. Smith *and* looked after the place?

Ans. I can't tell. Cap. Smith came over there some times when there was no agent there.

24th Q. Don't you know that Cap. Smith went to Yellow Bayou every day or very frequently while there was no agent on the place?

Ans. I can't recollect; I know he came over some times, but can't tell whether every day or not.

25th Q. Could Cap. Smith have visited the place frequently without your seeing him?

Ans. Yes, sir.

26th Q. Do you remember of Cap. Smith having had any levee work done on the place?

Ans. No, sir; I don't remember that he had any such work done.

1143 27th Q. Do you remember of Cap. Smith having had rails hauled and the fence repaired on Yellow Bayou?

Ans. I hauled some rails for him during the time Mr. Moran was there and at the time that Cap. Smith stayed there.

28th Q. Do you remember, in 1873, of Cap. Smith having employed you to haul Yellow Bayou cotton, cotton seed, rails, and feed; and did not he pay you for the same?

Ans. I can't recollect that I hauled at that time. I hauled but very little after Cap. Smith's time. I hauled some in Mr. Moran's time.

29th Q. Do you remember of Cap. Smith measuring, on Yellow Bayou, corn or cotton land for any of the hands?

Ans. No, sir; I don't.

30th Q. Did you ever see him laying off any ditches or superintending any levee work or repairing the gin-house or cabins on Yellow Bayou after he moved to Bellevue?

Ans. No, sir.

31st Q. Did you ever see Cap. Smith on Yellow Bayou plantation after he moved to Bellevue?

Ans. Yes, sir.

32nd Q. What was he doing?

Ans. He would ride around through the plantation.

33rd Q. Did you ever see Cap. Smith weighing or dividing any cotton on Yellow Bayou or having seed sacked and hauled away after the Yellow Bayou gin was repaired?

Ans. He divided some cotton for me while Mr. Moran was there.

34th Q. You say you saw Cap. Smith, after he moved on Bellevue, riding around on Yellow Bayou. What business did he have riding around on Yellow Bayou?

Ans. I don't know what business he had riding around on Yellow Bayou; he never told me.

35th Q. Where did he ride generally?

1144 Ans. I saw him riding up the turning row and in the quarters a good many times.

36th Q. What was he doing in the quarters?

Ans. He was sitting on his horse.

37th Q. Did you ever see him doing anything else besides sitting on his horse while in the quarters?

Ans. No, sir.

38th Q. Was he talking to anybody, and what did he say?

Ans. I don't know.

39th Q. Do you know of Cap. Smith having a Yellow Bayou team — away from Adam White because he mistreated the mules?

Ans. Yes, sir. I know he took the team away one night over on Bellevue.

40th Q. Do you remember of Cap. Smith having driven off or discharged any of the Yellow Bayou hands?

Ans. I don't recollect. He might *of* done it.

41st Q. Did you ever know of Cap. Smith taking any of the Yellow Bayou stock and selling it while there was an agent on the place?

Ans. I don't recollect it.

42nd Q. Is your memory good or is it defective?

Ans. I can't recollect anything long, except that I charge my memory with it.

43rd Q. How old is your oldest son?

Ans. He was born since the war. He is 20 or is 18 or 19.

44th Q. Is he married?

Ans. He is, and has one child. I don't know how old the child is.

45th Q. When was you married?

Ans. I don't remember. Some time about the last year of the war. I was about 16 when I was married.

46th Q. When did Mr. Moran go on Yellow Bayou?

1145 Ans. I don't know what year or what time of the year.

47th Q. Who managed Yellow Bayou from the time Mr. Mole left until the time Mr. Moran went there?

Ans. Cap. Smith.

48th Q. Who managed Yellow Bayou from the time Mr. Kirk left until Mr. Mole took charge?

Ans. I don't recollect.

49th Q. Was there any agent on the place during that time?

Ans. Not that I know of; there might have been.

50th Q. When there was no agent on Yellow Bayou who superintended it and managed it?

Ans. I don't know; I can't recollect it.

51st Q. Did the place at such times have a manager?

Ans. No, sir; not that I know of. If there was I can't recollect it.

52nd Q. Where did you get feed for your teams, and who gave it out?

Ans. I don't know anything about the feed. I paid no attention to that at all.

53rd Q. Did not Cap. Smith send your big skiff down to Luna for feed?

Ans. No, sir; I can't recollect.

54th Q. Was there ever any feed brought up from Luna in your skiff?

Ans. Yes, sir; I hired my skiff to Mr. Todd.

55th Q. What year and what time of the year did you hire the skiff to Mr. Todd?

Ans. In the spring of 1874, as well as I can recollect.

56th Q. Who was the manager on the place at that time?

Ans. I don't know. Mr. Todd was there himself.

57th Q. Don't you know that Mr. Kirk was there in 1874?

Ans. No, sir; I can't recollect. He was there some time.

1146 58th Q. Don't you know that Mr. Simmons was on Yellow Bayou in 1874?

Ans. He was there, but I don't know what year.

59th Q. Who generally divided the cotton at the Yellow Bayou gin?

Ans. Mr. Todd all the time pretty well.

60th Q. Was there not cotton ginned there when Mr. Todd was not on the place, and who divided it with the hands?

Ans. The agent when Mr. Todd was not there.

61st Q. Did you very often see the agent and Cap. Smith riding over the place?

Ans. Yes; I saw them riding over the place sometimes—he and Mr. Moran.

62nd Q. Did you ever see him ride over Yellow Bayou with any of the other agents?

—. He might have done; I don't recollect; I paid no attention.

63rd Q. Do you know of Cap. Smith having Dave Tripp and Nelson Strother hauling lumber from the river for the Yellow Bayou gin?

Ans. No, sir; I can't recollect it.

64th Q. Do you recollect of having talked with any one about the evidence you were going to give in this case?

Ans. No, sir; no one ever said anything to me.

65th Q. How did you happen to be here?

Ans. They sent word for me to come down.

66th Q. Is the messenger the only person you have talked to about this case?

Ans. Yes, that is the only one I have talked with.

67th Q. Are you sure he is the only one you have talked with about this case?

Ans. Yes, sir.

68th Q. Have you not talked with different persons since you came to town this morning about this case or the evidence you were going to give?

1147 Ans. No, sir; not as I know of.

69th Q. Have you not talked with Gen. Reynolds about this case this morning and since you came to town—about the evidence you were to give in this case?

Ans. No, sir.

70th Q. Did you ever see Cap. Smith measuring corn land for Lewis Banks, Cy. Brown, or any one on Yellow Bayou?

Ans. No, sir.

71st Q. You say that when Mr. Todd was not on Yellow Bayou that the agent divided the cotton at the Yellow Bayou gin. Which one of the agents you have mentioned do you refer to?

Ans. Mr. Kirk divided it, Mr. Simmons divided it, Mr. Mole divided it.

And further deponent sayeth not.

his
HENRY x TURNER.
mark.

Deposition of Clay Cottenham.

At the same place and on the same day CLAY COTTENHAM, a witness on behalf of the plaintiff, after being duly sworn, testified as follows, to wit:

My name is Clay Cottenham; I reside on the Yellow Bayou plantation; aged about 27 years; occupation that of making cotton.

1st Q. How long have you been living on Yellow Bayou plantation?

Ans. I was raised there principally.

2nd Q. Have you been there since—from 1868 to 1876?

Ans. Not all of the time. Two years I lived on the Bayou Mason. I lived on Yellow Bayou from 1873 on.

3rd Q. Who was the manager on Yellow Bayou in 1873 and 1874?

Ans. Mr. Simmons was the manager in 1873 and part of 1874, as near as I can recollect.

4th Q. Who was there after Mr. Simmons?

Ans. I think Mr. Kirk was there next.

5th Q. How long did Mr. Kirk stay and who came after him?

Ans. I don't know who came after Mr. Kirk—whether Mr.
1148 Mole or who. I don't know how long Mr. Kirk stayed.

6th Q. Did these managers have control of Yellow Bayou while they were on it?

Ans. Yes, sir; so far as I know.

7th Q. Did any one have charge over them while they were in charge, except Mr. Todd?

Ans. Not that I know of.

Cross-examination:

1st Q. When did you go on the Bayou Mason from the Yellow Bayou place?

Ans. I don't know what year it was.

2nd Q. When did you return?

Ans. I don't remember exactly, but think it was in 1872.

3rd Q. What manager or agent was on the Yellow Bayou place when you went back there?

Ans. I don't recollect who was there.

4th Q. Was there any agent there when you returned?

Ans. I don't know, sir; I can't remember.

5th Q. What agent was on Yellow Bayou when you went from there to Bayou Mason?

Ans. I don't think there was any agent; I don't know, though.

6th Q. What years did you live on the Bayou Mason?

Ans. I don't know; I did not charge my memory. I was not of age then. I took no charge of dates only from 1873 on.

7th Q. Did you live anywhere else off of Yellow Bayou other than the time you lived on Bayou Mason?

Ans. I never lived anywhere else off of Yellow Bayou, excepting the two years I lived on the Bayou Mason.

8th Q. You say you have been living since from 1868 to 1876 on Yellow Bayou, excepting the two years you lived on Bayou
1149 Mason. Please state, if you can, what two years you spent on the Mason.

Ans. I can't tell.

9th Q. Did you spend the year 1876 there?

Ans. Of course not.

10th Q. Did you spend the year 1868 there?

Ans. I don't know.

11th Q. Or 1875 there?

Ans. No, sir.

12th Q. Or 1869 there?

Ans. I don't know, sir.

13th Q. Or 1874 there?

Ans. No, sir; I did not spend that year there.

14th Q. Or 1870 there?

Ans. No, sir; I think not.

15th Q. Or 1873 there?

Ans. No, sir; I spent that on Yellow Bayou.

16th Q. Or 1871 there?

Ans. I don't remember 1871.

17th Q. Or 1872?

Ans. I don't remember where I was in 1872.

18th Q. How do you remember so well where you were in 1873 and don't remember where you were in 1868, 1869, 1870, 1871, and 1872?

Ans. Because I never took no notice of the years until 1873; I then commenced business for myself; before that I was working under orders from others; I took no notice of dates.

19th Q. When did you marry?

Ans. I don't remember what year I married. I think I married before 1873; I am not certain.

20th Q. Did you marry before you went on the Mason?

Ans. No, sir.

1150 21st Q. Where were you married, and in what year?

Ans. I was married on Yellow Bayou; I don't know in what year.

22nd Q. Who was the agent on Yellow Bayou when you were married?

Ans. I don't know.

23rd Q. What time of the year were you married?

—. I was married in April.

24th Q. Did you work for yourself before you were married?

Ans. I did; that's what I put in for.

25th Q. How long before you were married did you work for yourself?

Ans. I did not keep any account of it.

26th Q. What year did you leave your mother and commence to work for yourself?

Ans. I did not take any change off.

27th Q. Were you married in 1873?

Ans. I was.

28th Q. How long before that?

Ans. I don't know.

29th Q. Were you married in 1870?

Ans. I don't know.

30th Q. Were you married in 1871?

Ans. I don't know, sir.

31st Q. Did you talk with any one about the evidence you were to give in this case before you came here?

Ans. No, sir.

32nd Q. Were you married in 1872?

Ans. I don't know.

33rd Q. Did you ever talk to any one about the evidence you could give in this case since you came to town?

Ans. No, sir; only brother Alfred. I asked what we were summoned here for. I met the General, and he asked me about
1151 the agents on the place. I told him I did not know much about the agents on the place.

34th Q. Who else was present when you were talking with the General?

Ans. Henry Turner, I believe; I mean Henry Turner who has been a witness in this case.

35th Q. Did the General talk to you and Henry Turner about the case?

Ans. Yes; the principal talk was with Henry. I was standing by; I joined in the talk.

36th Q. Who were the managers on Yellow Bayou before Mr. Simmons?

Ans. I don't know.

37th Q. Don't you know that there was an agent or manager named Scott?

Ans. I don't know whether it was before or after Mr. Simmons.

38th Q. Don't you know that there was another manager there named White before Mr. Simmons?

Ans. Yes; but I don't know whether he was there before or after Mr. Simmons.

39th Q. While you were on Yellow Bayou where was the Yellow Bayou cotton ginned?

Ans. I remember once that we ginned at the Bellevue gin.

40th Q. Who had that cotton hauled to the Bellevue gin, weighed, and divided with the hands—the agent or Cap. Smith?

Ans. The time I remember Mr. Todd was there himself.

41st Q. Who was the agent on the place at that time?

Ans. I don't know who was the agent that year.

42nd Q. What year do you refer to?

Ans. I don't know what year; it was in the fall, when we usually gin and bale.

43rd Q. After 1873 do you know of Cap. Smith having divided any cotton on Yellow Bayou?

Ans. I remember once he divided cotton at the Bellevue
1152 gin with me.

44th Q. Who was the agent that year, and why did not the agent divide it?

Ans. I don't know.

45th Q. Who directed you to haul it?

Ans. Mr. Todd was there, I think; I won't be positive about any of it.

46th Q. Don't you know that the agent on Yellow Bayou received instructions from Cap. Smith about the management or work on the place?

Ans. No, sir; not that I know of.

47th Q. Were there months at a time when there were no agents on Yellow Bayou?

Ans. I don't know, sir.

48th Q. Were there not times when there — no agents on Yellow Bayou?

Ans. No, sir; not that I know of.

49th Q. Were you on Yellow Bayou when Mr. White was there?

Ans. Yes, sir.

50th Q. Were you on Yellow Bayou when Mr. Scott was there?

Ans. Yes, sir; I was there then.

51st Q. Don't you know that Mr. Scott left in September and that there was no agent there until Mr. White came, in the following April?

Ans. I don't remember.

52nd Q. Don't you know that Mr. White left in December and that there was no agent there until Mr. Simmons went there, in July following?

Ans. I don't remember.

53rd Q. Don't you recollect that there were considerable periods of time from the leaving of one agent until another would come?

Ans. There was some period of time, but how long or how
1153 short I don't remember.

54th Q. Who looked after the place during the time there was no agent there?

Ans. I don't know.

55th Q. Don't you know that Cap. Smith did?

Ans. No, sir; I don't.

56th Q. Where was the Yellow Bayou cotton ginned the years Scott and White were agents?

Ans. I don't know.

57th Q. Don't you know that it was ginned, weighed, and divided by Cap. Smith at the Bellevue gin?

Ans. No, sir; I don't remember at that time.

58th Q. Did you make a crop on Yellow Bayou each of the years that Scott and White were agents?

Ans. Yes, sir.

59th Q. Where were those crops ginned and divided, and who divided them with you?

Ans. I don't know whether it was at Yellow Bayou or Bellevue, nor who divided them with me.

60th Q. Do you know of Cap. Smith having had any leveeing or ditching done on Yellow Bayou, or of his having had rails hauled, houses and gin-house repaired?

Ans. I don't know who had the work done—whether the agent or Captain I don't remember.

61st Q. Did your wife not cook for some of the agents on Yellow Bayou; and, if so, for whom and who paid her her wages?

Ans. My wife cooked for Mr. Kirk, one of the agents. I know she cooked for Mr. Todd, too. I don't know who paid her her wages. We were parted then; she attended to her business and I attended to mine.

62nd Q. What was your wife's name?

Ans. Annie Cottenham.

1154 63rd Q. Are you a colored man and can you read and write?

Ans. I am a colored man; cannot read or write much.

And further deponent sayeth not.

A. C. COTTINGHAM.

Deposition — Alfred Parish.

At the same place and on the same day ALFRED PARISH, a witness on behalf of the plaintiff, after being duly sworn, testified as follows, to wit:

My name is Alfred Parish. I reside on the Yellow Bayou plantation, Chicot county, Arkansas; aged about 47 years; occupation, a farmer.

1st Q. How long have you been living on Yellow Bayou?

Ans. About 12 years; have been there since 1870, except one year.

2nd Q. Who were the principal colored men—I mean the heads of squads—on Yellow Bayou?

Ans. Lewis Banks, Ned Smith, Sam. Tripp, Henry Turner, and Alfred Parish.

3rd Q. Did Mr. Todd usually visit Yellow Bayou once a year, or oftener?

Ans. He generally visited it about once a year.

4th Q. What time in the year would he come, and about how long would he stay?

Ans. He would come down in the winter and stay until along toward spring—about the time it would begin to get warm.

5th Q. Did he leave any managers on the place while he was gone? If so, name some of them.

Ans. Yes, sir; he left managers there while he was gone; he left Mr. Kirk, Mr. Simmons, Mr. Moran, Mr. White. I was not there while Mr. Scott was there. Mr. Mole was also there.

6th Q. Did these men, as managers, have control of Yellow Bayou?

1155 Ans. They did, except that they were under Cap. Smith.

7th Q. Have you been talking with Cap. Smith to-day or yesterday?

Ans. No, sir; no more than I told him howdy.

8th Q. Who did you go to for orders on Yellow Bayou in regard to the management of the place?

Ans. Generally to the man on the place.

9th Q. Did Mr. Todd give orders in regard to the crops while there?

Ans. Sometimes he did.

10th Q. Was Mr. Todd generally there when the crops were ginned and divided?

Ans. He was, generally.

11th Q. Who told you these managers were under the directions of Cap. Smith?

Ans. Mr. Todd; he told me to go to Cap. Smith if anything occurred. I suppose the reason he told me was that I had all of the contracts except the year 1871.

12th Q. Can you read and write?

Ans. Yes, sir.

13th Q. Did Cap. Smith have charge of the crops while these managers were on the place, or did the managers have charge of it?

Ans. He did; I don't know how it was with Mr. Kirk, but — the balance it was.

14th Q. Did not you tell me in your reply to a question a few moments ago that you looked to the managers in regard to the crop? And now please explain how it is that Cap. Smith had charge of it.

Ans. He would generally ride around to see how they were getting along, and give the managers some directions about it.

1156 15th Q. Was Mr. Todd's family, or any one of his family, on the place during the time you were there?

Ans. Yes, sir; Mr. Todd's family was there. His wife and one of his daughters would generally come down in the winter.

16th Q. Before you went on the stand you told me that Cap. Smith had no charge of Yellow Bayou while the other managers you have mentioned were on the place; that Mr. Todd generally made the contracts, and that these men had control of the property. How do you explain that now?

Ans. I told you that, except riding around and looking over the crop, Cap. Smith had to tell them many times what to do—what was necessary.

17th Q. Were the Yellow Bayou crops ginned on Yellow Bayou gin after you went there; if so, what years were they ginned on that gin?

Ans. The crops were ginned at the Bellevue gin until the Yellow Bayou gin was fixed up; I don't remember what year that was.

And further deponent sayeth not.

ALFRED PARISH.

Deposition — Moses Thomas.

At the same place and on the same day MOSES THOMAS, a witness on behalf of the plaintiff, after being duly sworn, testified as follows, viz:

My name is Moses Thomas; I reside in Lake Village, Chicot county, Arkansas; aged about 30 years.

1st Q. Did you carry the chain in the survey made by Col. Gratchel — parts of secs. 6 and 7, parts of the Bellevue plantation, some two or three weeks ago?

Ans. Yes, sir; I carried the chains for Col. Gratchel in the survey of some of the cleared lands which I supposed was on the
1157 Bellevue plantation. I don't know the number of the sections.

2nd Q. Did that survey cover all of the land that was cleared or that had been cleared, or was there a portion of the land that was slightly grown up and adjoining it that had been cleared years before, not included in the survey?

Objected to as leading.

Ans. There was land that was subject to cultivation that was not included in the survey. There was land subject to cultivation adjoining the survey on the Bellevue plantation which was not included in the survey. There was land on the southeast part of the gin-house which looked like it had been lying out for a year or two adjoining this survey and not included in it. I don't know that it was the southeast from the gin-house. It was between the gin-house and Yellow Bayou and east of a north and south section line.

3rd Q. Was it the line that you had surveyed a day or two before running north and south between Yellow Bayou and Bellevue that you refer to as north and south line?

(Objected to as leading.)

Ans. Yes, sir; except that I don't know whether it was the line between Yellow Bayou and Bellevue or not.

Cross-examination:

1st Q. Are you a colored man?
Ans. Yes, sir.
2nd Q. Did you ever survey any?
Ans. No, sir; I carried the chain, though.

Further sayeth not the deponent.

MOSES THOMAS.

By agreement of counsel the further taking of depositions in this — is continued until Dec. 31st, 1883.

1158 *Deposition — J. W. Trawick.*

DEC. 31ST, 1883.

At the same place and on the 31st day of Dec. J. W. TRAWICK, a witness for the defendant, after being duly sworn, testified as follows, to wit:

My name is J. W. Trawick; I reside on the Latrobe plantation, Chicot county, Arkansas; aged 50 years.

1st Q. How long have you lived in Chicot county?

Ans. About twenty-six years.

2nd Q. Were you acquainted with Wm. H. Todd in his lifetime and are you acquainted with Cap. B. H. Smith?

Ans. I was acquainted with Wm. H. Todd in — lifetime and am acquainted with Cap. B. H. Smith.

3rd Q. What is your business or occupation?

Ans. I am a carpenter by trade.

4th Q. Did you ever do any work on the Yellow Bayou or Bellevue plantations?

Ans. Yes, sir; I did on both. I worked every year, more or less, on Bellevue since 1869. I did wagon work for the Yellow Bayou plantation from the time Mr. Todd — possession until 1873, and it may be after that.

1159 5th Q. Who employed you to do that work on Yellow Bayou and Bellevue?

Ans. Capt. Smith.

6th Q. Who paid you to do that work?

Ans. Cap. Smith paid me some and Cap. Todd paid me some. Cap. Smith paid me for all of the work on Bellevue. For the work on Yellow Bayou Cap. Smith paid me some and Cap. Todd paid me some.

And further deponent sayeth not.

J. W. TRAWICK.

Deposition — Lewis Brooks.

At the same place and on the same day LEWIS BANKS, a witness for the defendant, after being duly sworn, testified as follows, to wit:

My name is Lewis Banks; I reside on the Bellevue plantation, Chicot county, Arkansas; aged about 57 years—I may be older; occupation, that of making cotton.

1160 1st Q. Were you acquainted with Mr. Wm. H. Todd in his lifetime and are you acquainted with Cap. B. H. Smith?

Ans. I am acquainted with Cap. Smith and was acquainted with Mr. Wm. H. Todd in his lifetime.

2nd Q. How long have you lived on the Bellevue place?

Ans. I don't know how long I lived on Bellevue. I helped clear the place off.

3rd Q. Did you ever live on any other place except Bellevue place?

Ans. I lived on the Yellow Bayou place.

4th Q. What years did you live on the Yellow Bayou place?

Ans. I don't know; it was just after the surrender.

5th Q. How long did you remain there, and about what time did you leave there?

Ans. I left there about the time Maj. Robinson and Cap. Hicks left there and went to Luna.

1161 6th Q. Did you go back to Yellow Bayou afterwards; if so, when?

Ans. The second year Cap. Smith went on Yellow Bayou I went back; he was on Yellow Bayou when I went back.

7th Q. How long did you remain on Yellow Bayou that time?

Ans. I stayed there about 8 or 9 years, as near as I can recollect.

8th Q. What managers or agents were on Yellow Bayou while you were there?

Ans. Mr. Niland was there; Cap. Smith was there, more or less; Mr. White was there; Mr. Simmons was there; Mr. Mole.

9th Q. Did any one ever teach school on Yellow Bayou?

Ans. Yes, sir; Mr. Scott taught there several months.

10th Q. Did Mr. Scott act as agent while he was on Yellow Bayou?

Ans. No, sir; he taught school; Mr. Smith done the managing.

1162 11th Q. While Mr. Todd was absent who had the management and control of Yellow Bayou?

Ans. Capt. Smith.

12th Q. How do you know that Cap. Smith had control and management of the place?

Ans. I always see him around there attending to business and having things righted up. He would go around and hire men to put up fences; had the gin repaired by me. The agents on the place were under his control the same as the rest of us and go by his instructions.

13th Q. Who gave the hands their lands—that is, who layed off the lands for the hands?

Ans. Cap. Smith.

14th Q. While you were on the place did you work a squad of hands?

Ans. I worked my own family.

15th Q. Who superintended the working of the crop and directed its cultivation?

1163 Ans. Capt. Smith.

16th Q. Who had the cotton ginned and divided and settled with the hands?

Ans. Cap. Smith.

17th Q. These agents, you say, were under Cap. Smith. What were their duties?

Ans. Their duties were to go around the field and see to the stock—feed the stock while Mr. Smith was absent.

18th Q. Did Mr. Scott teach school on the Yellow Bayou more than once?

Ans. He taught twice—once in the fall and winter and once in the summer.

19th Q. Did any of the agents you have named build or repair any houses on the Yellow Bayou plantation?

Ans. Mr. Scott built houses; Mr. Kirk put up four (4) quarters; Mr. Simmons did work on the gin.

1164 Cross-examination:

1st Q. Are you a carpenter?

Ans. Yes, sir; sort a little.

2d Q. What year did Cap. Smith hire you to repair the Yellow Bayou gin?

Ans. I don't remember exactly what year it was. I did not take charge of it. Mr. Kirk was there that year at the time I did that work.

3rd Q. Did you have your own team?

Ans. I did.

4th Q. Did Mr. Todd remain on the place while you were there?

Ans. A mighty little time. He would come down in the fall. He was sickly, and would have to go back home. He would be getting ready to go back home in *in* February or March. I don't remember that he ever remained to see the crop planted.

1165 5th Q. Did he look after seeing the cotton divided and settlements made with the hands while he was there?

Ans. No, sir; he would mostly send Cap. Smith to divide the cotton.

6th Q. Did Mr. Todd make any contracts with the hands to stay on the Yellow Bayou place?

Ans. He would talk with the hands, but whether he wrote them out or signed them I don't know.

7th Q. Did he make a contract with you one year?

Ans. I don't remember. Mr. Todd asked me to come up to make a contract because he said he might die. I don't recollect of going up and signing any contract. We were talking about it, and the other hands said we had better go and sign it.

1166 8th Q. That was one year; now, how about other years?

Ans. We just made a verbal contract, sometimes with Capt. Todd before he would believe, and sometimes with Cap. Smith.

9th Q. Did Mr. Todd make contracts with other hands on the place any year?

Ans. I disremember whether he did or no.

10th Q. Did Cap. Smith and Mr. Todd work Yellow Bayou in partnership in 1869?

Ans. When I went there they were both there; at least, the old man came there shortly after I went there.

11th Q. Did Mr. Todd's family stay with him during the winter seasons while he was there?

Ans. Yes, sir; a little while.

1167 12th Q. You say the duties of the agents on the place were to see after the fences and feed the mules when Cap. Smith

was not there. Did Cap. Smith attend to these duties when he was there?

Ans. Cap. Smith would see that the fence was put up by the men that came there, and see that the mules were fed.

13th Q. Was Mr. Kirk there the year that the overflow washed the fences away so badly, the same year that you repaired the gin?

Ans. He was there the year that I repaired the gin, in 1875.

14th Q. Don't you know that Cap. Smith and Mr. Kirk were not on good terms, and that Cap. Smith did not visit Yellow Bayou while Mr. Kirk was on it but two or three times?

Ans. I don't know anything about what occurred between Cap. Smith and Mr. Kirk. I could see him riding around every now and then, once or twice a week.

1168 15th Q. Did Mr. Todd work the Yellow Bayou place with Cap. Smith during the time, in 1869, as long as you remained there the same, or did they change their mode of working—that is, did they work it in partnership part of the time or separately part of the time?

Ans. I don't know whether they worked it separately at all or not.

16th Q. Did they work Yellow Bayou the same as Bellevue—that is, did they work in partnership or separately?

Ans. I don't know; I can't tell. I did not see any change.

17th Q. Did Cap. Smith have the same control over Bellevue that he did over Yellow Bayou?

Ans. Yes, sir.

18th Q. How long have you been living on Bellevue this time?

Ans. This coming March, I think, will be six (6) years.

1169 19th Q. Have you been talking with Cap. Smith about the evidence you would give in this case?

Ans. Cap. Smith has asked me some questions since you (Gen. Reynolds) sent for me on Thursday.

20th Q. Is that all?

Ans. He asked me what I knew about this case and what you wanted of me.

21st Q. What did you tell him?

Ans. I told him Mr. Reynolds asked me who was the manager on the place; I told him Cap. Smith, and then he said, I will pay you for your trouble. I don't want you.

22nd Q. Is that all you told him?

Ans. Yes, sir.

23rd Q. Did Mr. Todd have the same control over Yellow Bayou that he did over Bellevue?

(Objected to as incompetent.)

1170 Ans. No, sir; I don't know; I am working in the field, and don't know what Mr. Todd did when he came there about that.

24th Q. Did Mr. Todd exercise the same control over Bellevue that he did over Yellow Bayou while he was on Yellow Bayou during the winter season?

Ans. I don't know.

25th Q. Did Cap. Smith employ Mr. Simmons to repair the Yellow Bayou gin?

Ans. Yes, sir.

26th Q. How do you know?

Ans. I helped get the timber.

27th Q. Did he employ him while you were getting the timber?

Ans. I guess it was; it was before that.

28th Q. Were you present when he made the contract with Mr. Simmons to repair the gin?

1171 Ans. I was not, sir.

29th Q. How do you know that Cap. Smith made the contract with Mr. Simmons to repair the gin?

Ans. I thought so because there was nobody else there to employ him.

30th Q. Then you don't know whether he did or not?

Ans. No, sir; I do not.

—. Did these agents you mentioned give orders about the crop while they were on the place?

Ans. I don't know, sir; they did not to me.

And further deponent sayeth not.

his
LEWIS x BANKS.
mark.

By agreement of counsel the further taking of depositions in this cause is postponed until January 1st, 1884.

1172 *Deposition — James Thurman.*

JAN. 1ST, 1884.

At the same place JIM THURMAN, a witness for defendant, after being duly sworn, testified as follows, to wit:

My name is James Thurman; I reside on the Bellevue plantation, Chicot county, Arkansas; aged about 29 years *old*; farmer.

1st Q. How long have you been living on Bellevue?

Ans. I went there in 1875, after the water went down.

2nd Q. Where did you live before you went there?

Ans. On the Yellow Bayou plantation.

3rd Q. What years, if you remember, did you live on the Yellow Bayou plantation before you went to Bellevue?

Ans. 1870, 1871, 1872, 1873, and 1874.

4th Q. Who carried on the planting interests or who con-
1173 trolled the Yellow Bayou plantation the years you were there?

Ans. Capt. Smith.

5th Q. Who lived on the Yellow Bayou place during the years mentioned?

Ans. The first year a man by the name of Scott; the next year a man by the name of White. After White then came Josh. Simmons. Mr. Kirk came there while I was there, but I moved away the same year.

6th Q. Who had the general control of the plantation interests during the years mentioned?

Ans. Cap. Smith.

7th Q. You have spoken of Mr. Scott, Mr. White, and Mr. Simmons being on the place while you were there. What were their duties?

Ans. Mr. Scott followed carpenter work awhile and school teaching, and attended to the stock, and saw to keeping the fences
1174 up, and the like. Mr. White looked after the stock and to keeping up the fences and all like that. Mr. Simmons did carpenter work and saw to keeping the fence up and looked after the stock.

8th —. Where were the crops on Yellow Bayou the years mentioned ginned?

Ans. All of the years mentioned except 1874 the crops were ginned at the Bellevue gin.

9th Q. Who had charge of the Bellevue gin?

Ans. Cap. Smith.

10th Q. You spoke of Messrs. Scott, White, Simmons, and Kirk being on the Yellow Bayou plantation during the years 1870, 1871, 1872, 1873, and 1874. Do you know of Cap. Smith having sold any stock to any of the hands on the place?

Ans. Yes, sir; he sold a clay-bank horse to Anthony Thurman, my father.

1175 11th Q. Who was living on that place when that house was sold?

Ans. I think that Mr. White was staying there.

12th Q. Who, if any one, directed and controlled Mr. White, Simmons, Scott, and Kirk, while you were there, in their operations on the Yellow Bayou plantation?

Ans. They all worked under the control of Cap. Smith. The reason why I know is because Mr. Todd told my father, Anthony Thurman, in my presence that Cap. Smith was the ruler and the boss of everything on the plantation.

Cross-examination:

1st Q. Who was present beside you when Mr. Todd told your father that Cap. Smith was the ruler and boss of everything on the plantation?

Ans. Me and him were the only ones there.

1176 2nd Q. How often did Mr. Todd tell him that?

Ans. He told him once; we never asked him any more questions about it.

3rd —. When did he tell him that?

Ans. The first year he went there.

4th Q. Was that during the same time that Mr. Scott was teaching school?

Ans. I disremember; Mr. Scott would teach school awhile and then carpenter awhile.

5th Q. Did not Mr. Todd promise to sell your father that clay-bank horse before he went away from the place the year the horse was sold?

Ans. My father spoke to Mr. Todd about the horse and he directed him to the Captain.

6th —. Did Mr. Todd stay on the place much while you were there?

Ans. He would come sometimes, but would not stay long
1177 when he came. He missed coming one year I know, because he was sick.

7th Q. Who attended to the business when Mr. Todd was on the place?

Ans. Cap. Smith attended to the business when Mr. Todd was in his own house. Mr. Todd had no more to do with it than if he was a little child, according to dividing the crop and the like.

8th Q. Did not Mr. Todd employ your father or contract with him to make a crop on Yellow Bayou one of the years you were there?

Ans. If he did I don't know anything about it.

9th Q. Did Mr. Todd make contracts with any of the hands?

Ans. I don't knew whether he made contracts with any of the other hands or not. I did not ask them. I don't know anything about any of them except my father.

1178 10th Q. Did Mr. Simmons repair the gin on Yellow Bayou in 1873?

Ans. I disremember; I know he repaired the gin, but don't know the year. I know all of my crops were ginned on the Bellevue gin but one.

11th Q. Were not the crops of the other hands for 1873 ginned on the Yellow Bayou gin?

Ans. If I remember right, all of the crops made on Yellow Bayou while I was there were ginned on the Bellevue gin except the year 1874.

12th Q. Did not Mr. White look after the crop while he was on Yellow Bayou?

Ans. I told you the Cap. was the boss. Mr. White could ride over the crop and look at it if he wanted to, if he had nothing else to do, but he had to look after the fence and the stock.

13th Q. How much and what stock?

1179 Ans. I can't tell how much stock, but the stock on the plantation for the plantation use.

14th Q. About how many head of stock; how many mules?

Ans. I can't tell.

15th Q. Well, about how many?

Ans. I can't tell how many?

16th Q. Were there as many as ten?

A. I tell you once I couldn't tell you — many.

17th Q. You say Mr. White did not do anything but attend to the stock and fix the fence. Can't you think of anything else he did?

Ans. I can't tell you anything else; I have told you all I know.

18th Q. Did not Mr. Simmons do something besides carpentering and looking after the fences and the stock?

Ans. I have told you so far about it as I know?

1180 19th Q. Did not Mr. Todd divide some of the cotton with some of the hands in 1872, and let Col. Carlton have some of the cotton received from the hands?

Ans. I know nothing about it.

20th Q. You say that Mr. Todd had nothing more to do with dividing your father's crop than a little child. Did he have nothing to do with the crops of the other hands?

Ans. You will have to ask them about that, I can't tell.

And further deponent sayeth not.

his
JAMES X THURMAN.
mark.

Deposition — Hannibal Thompson.

On the same day HANNIBAL THOMPSON, a witness on behalf of the defendant, after being duly sworn, testified as follows, to wit:

My name is Hannibal Thompson; I reside on the Yellow Bayou plantation, Chicot county, Arkansas; aged about 30 years.

1181 1st Q. How long have you lived on the Yellow Bayou place?

Ans. I lived there one year and six months since Mr. Halliday owned the place, and am living there now.

2nd Q. Where did you live in 1874 and 1875?

Ans. On the Yellow Bayou place.

3rd Q. Who owned the Yellow Bayou place at that time?

Ans. Mr. Todd.

4th Q. What were you doing on the place at that time?

Ans. Farming; working cotton.

5th Q. Under whos- control were you making cotton on that place during those years?

Ans. Under the control and by the orders of Mr. Todd to Cap. Smith.

6th Q. Who occupied the dwelling-house on the Yellow Bayou place during the time you were there in 1874 and 1875?

1182 Ans. Mr. Simmons occupied it the first year, 1874; Mr. Kirk the next year, 1875.

7th Q. What were Mr. Simmons' duties while on the Yellow Bayou place?

Ans. He attended to stock and looked after the fences.

8th Q. Did Mr. Simmons do other work on other places while he was on Yellow Bayou?

Ans. Not that I know of.

9th Q. Did he do any other besides that you have mentioned while on the place?

Ans. No, sir; not that I know of. I saw him ride out in the field one time; that is the only time.

10th Q. Did Mr. Simmons have any control of the crops during the years you were there?

Ans. No, sir.

11th Q. State, if you know, whether or not Mr. Simmons
1183 repaired the gin on the Yellow Bayou place while you were there.

Ans. The gin was already weatherboarded up when I came there. Mr. Simmons worked on the press the year that I was there.

12th —. State, if you know, whether the press was not in such a condition that year that cotton could not be baled on it.

Ans. You could not bale on the press.

13th Q. Who had the general management of the planting interests on that place during the years you were there, 1874 and 1875?

Ans. Cap. Smith.

14th Q. Were you not on Yellow Bayou in 1876?

Ans. I was.

15th Q. Who had the general direction of the management of the crops on that place during the years you were there?

1184 Ans. Cap. Smith.

Cross-examination:

1st Q. How do you know that Mr. Simmons never rode out in the field but once?

Ans. Because I never saw him. I was on the place twelve months under Mr. Simmons. I never saw him out in the field but once; saw him at the house several times.

2nd Q. What do you mean by general manager?

Ans. I mean that if you employ me and put your business in my hands to carry it out honorably and upright.

3rd Q. Did Mr. Kirk have any charge of the crop on Yellow Bayou?

Ans. Mr. Kirk rode around about the place.

4th Q. Did Mr. Mole have any charge of the place?

Ans. Mr. Mole was around too.

1185 5th Q. Did Mr. Todd have any charge of any business on the place?

Ans. Mr. Todd was not there.

6th Q. Whose squad were you in?

Ans. With myself and my wife.

7th Q. Did you work under a written contract?

Ans. Did not have a written contract; verbal, by the word of mouth.

8th Q. Who with?

Ans. Mr. Todd instructed me to go to Mr. Smith.

9th. Q. What was your contract?

Ans. My contract was to do faithful labor, he to furnish the team and all of the farming utensils.

10th Q. Was that the same contract every year you were there?

Ans. I had that year—two years. One year I rented.

And further deponent sayeth not.

his
HANNIBAL x THOMPSON.
mark.

1186 *Deposition — Sam. Tripp.*

At the same place and on the same day SAM. TRIPP, a witness on behalf of the defendant *of*, after being duly sworn testified as follows, to wit:

My name is Sam. Tripp; I reside on the Yellow Bayou plantation, in Chicot county, Arkansas; aged about 48 years; farmer by occupation.

1st Q. How long have you lived on Yellow Bayou?

Ans. I don't remember exactly, but think that I went about two years after Cap. Smith went there.

2nd Q. How long was it after Major Robinson cultivated the place before you went there?

Ans. I was there the year that Maj. Robinson cultivated the place, and when he quit I left.

3rd. What year after Major Robinson cultivated the place did you return to Yellow Bayou?

1187 —. I think it was about 1870, though I don't remember.

4th Q. Have you been making crops on that place since that time?

Ans. I have pretty much all of the time.

5th Q. Who had the control and management of the place from the time you went there in 1870 up to the time Mr. Halliday took possession of it?

Ans. They had some men as agents living there on the place in the house to see that everything was taken care of, fences put up, but it was all done under the control of Cap. Smith.

6th Q. State whether or not Mr. Todd ever told you who had control of the Yellow Bayou plantation.

Ans. Yes, sir; I asked him when he came down in the fall about making our crop of corn and the like of that.

1188 Mr. Todd told me that Mr. Smith would see to it.

7th Q. Did Cap. Smith see after the repairs on the plantation as Mr. Todd told you he would do?

Ans. Yes, sir; he would come around sometimes, and had a temporary fence that we could make out with.

Cross-examination:

1st Q. Did the white men on the place that you speak of give any orders about the making of the crop on the place while you were there?

Ans. They would ride around the place and see the mules and see that nobody didn't abuse them. They had nothing to say about the crop.

2nd Q. Did most of the hands on the place own their own mules?

Ans. Some four or five of the hands on the place owned mules.

1189 3rd Q. How many mules on the place belonged to Mr. Todd?

Ans. As near as I can come at it, he owned some eight or ten head.

4th Q. Did Mr. Todd stay on the place during any portion of the years you were there?

Ans. He would generally come down about Christmas and stay until about February or March.

5th Q. When he would come down did he not see to and look after the crops and make contracts with the hands?

Ans. While Mr. Todd was here he would look after his interest in the crop—Mr. Todd—just like I foretold you. He said Cap. Smith was to fix up all contracts on his plantation of that sort.

6th Q. What sort?

Ans. Mrs. Todd told us that Mr. Smith would fix up all contracts.

1190 7th Q. Would not Mr. Todd tell you upon what terms you could hire the land?

Ans. Yes, sir.

8th Q. Was Mr. Smith to write out the contracts?

Ans. That was Mr. Todd's orders.

9th Q. Did not Mr. Todd leave Mr. Simmons on the place and look after his interests while he was absent?

Ans. Mr. Simmons would do just about like the balance—see after the mules, see about the fences. He had a job about the old gin there, fixing it.

10th Q. Who gave Mr. Simmons orders about fixing the price?

Ans. I guess he got the orders from Mr. Smith.

11th Q. Do you know whether he did — not?

Ans. No, sir; I don't know for certain whether he did or not.

1191 Re-examination:

1st. Q. About how many hands were on Yellow Bayou while you were there?

Ans. I think, as near as I can come at it, about 20; sometimes, perhaps, more.

2nd Q. Who made the contracts with those who had no teams?

Ans. Cap. Smith, under Mr. Todd's orders.

And further deponent sayeth not.

his
SAM. x TRIPP.
mark.

Deposition — Nelson Stroughter.

At the same place and on the same day NELSON STROUGHTER, a witness on behalf of the defendant, after being duly sworn, testified as follows, to wit:

My name is Nelson Stroughter; I reside on the Bellevue plantation, in Chicot county, Arkansas; age, 53; occupation, farmer.

1192 1st Q. Where did you live in the years 1873, 1874, and 1875?

Ans. On the Bellevue plantation.

2nd Q. State, if you know, where the crops raised during those years on the Yellow Bayou plantation were ginned?

Ans. They were ginned on the Bellevue gin.

3rd Q. Who hauled the cotton raised during these years to the Bellevue gin?

Ans. I helped haul it with others.

4th Q. Under whos- directions did you do that hauling?

Ans. Under the direction of Cap. Smith.

Cross-examination:

1st Q. Are you right certain about what you have said?

Ans. I am, sir.

And further *defendant* sayeth not.

his
NELSON x STROUGHTER.
mark.

1193 *Deposition — Jackson Bowie.*

At the same place and on the same day JACKSON BOWIE, a witness for the defendant, after being duly sworn, testified as follows, to wit:

My name is Jackson Bowie; I reside on the John Kelly place, in Chicot county, Arkansas; aged 54 years; occupation, farmer.

1st Q. Where did you live in 1870, 1871, and 1872?

Ans. On the Yellow Bayou plantation.

2nd Q. Who owned the Yellow Bayou plantation then?

Ans. Wm. H. Todd.

3rd Q. Was Mr. Todd on Yellow Bayou when you went there?

Ans. Yes, sir; him and his lady.

4th Q. With whom did you make contracts the year that you stayed there?

Ans. Mr-. Todd and Smith.

1194 5th Q. Who made the contract with you for work on the Yellow Bayou place while there?

Ans. I made contract with Mr. Smith.

6th Q. Did you live on and work land on Yellow Bayou during the year 1876?

Ans. I did.

7th Q. With whom did you make your contract — year?

Ans. With Cap. Smith.

8th Q. Did you know a white man by the name of Scott on Yellow Bayou during the time you were there?

Ans. I did.

9th Q. What did he do on Yellow Bayou while you were there?

Ans. He built quarters and taught school.

10th Q. State, if you know, whether or not Mr. Scott had any other thing to do with the management of the crops while you were there.

1195 Ans. He did not; sometime- when we would ask him for anything on the place that we wanted to use he would say I *would* go over and ask Capt. Smith about it, and — would have to stand until he would come back.

Cross-examination:

1st Q. Did not you make the agreement with Mr. Todd about going on Yellow Bayou, and Mr. Smith wrote it out?

Ans. I don't remember whether Mr. Smith or Mr. Todd wrote the contract. I know it was written out, and when we came down to the court-house Mr. Smith came with us.

2nd Q. Did you have a written contract in 1876?

Ans. No, sir; only a verbal contract.

3rd Q. Did Mr. Mole have anything to do with the crop on Yellow Bayou in 1876?

1196 Ans. No, sir; not that I know of; I never saw him making himself interested about it.

4th Q. Did Mr. Todd interest himself about the crop while here?

A. No, sir.

his
JACKSON x BOWIE.
mark.

Deposition — Joshua Turner.

At the same place and on the same day JOSH. TURNER, a witness for the defendant, after being duly sworn, testified as follows, to wit:

My name is Joshua Turner; I reside on the Bellevue plantation, in Chicot county, Arkansas; aged 25 years; occupation, farmer.

1st Q. Did you ever live on the Yellow Bayou plantation? If so, state what years.

Ans. I lived on the Yellow Bayou place in 1874, 1875, and 1876.

2nd Q. Were you on the Yellow Bayou place when Capt. Smith went there?

1197 Ans. Yes, sir.

3rd Q. Who had the general superintendence and control of the Yellow Bayou plantation while you lived there?

Ans. Capt. Smith.

4th Q. Were there other white men besides Capt. Smith on the Yellow Bayou place? If so, who were they and what were their duties and relations to the place?

Ans. Yes, sir; Mr. Mole, Mr. Scott, Mr. Kirk, — Mr. Moran were there on the place at different times. They would ride around the place and see what was needed and let the Capt. know. When I say the Capt'n I mean Capt. Smith.

5th Q. Did Mr. Mole ever tell you anything about the management of the Yellow Bayou plantation?

Ans. No, sir.

1198 6th Q. Were you ever referred by those men you mention, Mr. Mole and others, to Cap. Smith in regard to the crop on Yellow Bayou?

Ans. Yes, sir; whenever anything was going to distruction or the crops being destroyed we were referred to Cap. Smith.

Cross-examination:

1st Q. Did these white men you speak of who were agents on the place do anything else but ride around and look and then tell Cap. Smith?

Ans. No, sir; they didn't do anything else on the place.

2nd Q. Did Mr. Simmons ride around over the place much?

Ans. Maybe sometimes I would see him once in a week, and maybe once in two weeks.

3rd Q. Did he do anything else besides looking after the stock and riding around?

1199 Ans. I never saw him do anything else.

4th Q. How long have you lived on Bellevue?

Ans. I have been there about four years.

5th Q. Did all of these white men do the same thing on the place?

Ans. Yes, sir.

6th Q. You say that you lived on Yellow Bayou in 1874, 1875, and 1876. Was that the only time you lived there?

Ans. That is the only time.

And further deponent sayeth not.

his
JOSHUA x TURNER.
mark.

1200 *Statement of L. H. Springer, One of the Defendants in said Suit.*

I gave my deposition in this suit some weeks since and stated therein that I was under the impression that I had been served with process in the original suit and also in the above suit, which is the revival of said original suit, but, upon examination, I find that I was not served with process only in the present suit; that of the two services mentioned in my deposition one of them was a service in the case of Woolfolk *v.* Smith *et al.*, pending in the same court; and, further, that I never authorized Messrs. Rice and Bishop to enter my appearance as the administrator of Wm. H. Todd in the said original suit of Allen, Nugent & Co. *et al. v.* Benjamin H. Smith.

Cross-examination:

1201 I am not positive and certain that I was not served with process in the original suit of Allen, Nugent & Co. *et al. v.* Benjamin H. Smith *et al.* I was aware that I said suit was pending. I have no recollection that I ever authorized any one to enter my appearance in said suit; I might have authorized some one or the attorneys engaged in said suit to enter my appearance as the administrator of the estate of W. H. Todd, but I have no recollection of ever doing it.

Re-examination:

I don't believe that I ever authorized any one to enter my appearance in said case.

L. H. SPRINGER.

1202 *Deposition of Thos. E. Willing.*

Interrogatory No. 1. State your name, age, residence, and occupation.

Answer. Name, T. E. Willing; age, 36; Lake Village, Chicot county, Arkansas; occupation, deputy sheriff.

Int'y 2. How long have you resided in Lake Village, Chicot county, Ark's, and what has been your occupation during that time?

Ans. 2. I have resided in Lake Village since 1869; occupation during that time, clerk, deputy sheriff, & in the merchantile business.

Int'g. 3. Were you acquainted with Wm. H. Todd in his lifetime and are you acquainted with Benj. H. Smith & Jas. W. Cooper, the other original defendants in this suit; &, if so, how long have you known them, respectively?

Ans. 3. I am acquainted with Wm. H. Todd & Benj. H. Smith; have known them for five or six years. I am not acquainted with Jas. W. Cooper.

Int'g. 4. As deputy sheriff, did you have charge of an execution in favor of one W. P. Halliday against said Wm. H. Todd,
1203 and, if so, about what time was the same placed in your hands; and if levied upon, what property and upon whose direction was the same made?

Ans. 4. There was such an execution placed in my hands on the first day of March, 1876; said execution was levied upon the following-described property, viz.: Fr'l section 12, N. fr'l ½ of sec. 11, un'd ½ S. ½ sec. 11, fr'l sec. 14, S. E. pt. N. E. ½ sec. 10, sec. 23, S. W. ¼ sec. 13, E. ½ N. W. ¼ sec. 24, E. ½ N. E. ¼ sec. 22, and the E. ½ of the S. E. ¼ sec. 15—all in township 15 S., R. 2 west. The execution was levied under the direction of Wm. H. Todd—that is, the — he wished levied on was pointed out to me by Wm. H. Todd.

Int'g. 5. Was the property so levied on, or any portion of it, sold to satisfy said execution; &, if so, who were the purchasers thereof?

Ans. 5. A portion of said property was sold on the 5th day of April, 1876, and purchased by Mrs. E. E. Bolivar. At said sale there was a sales bond given for the purchase-money of said property by Wm. H. Todd, the purchaser, with Wm. H. Todd as surety thereon.

1204 Int'g. 6. Will you attach to & as part of your deposition said execution, return, and sales bond, & identify the same by being marked Exhibit "A," signed by you?

Ans. 6. Yes.

Int'g. 7. Who did you find in possession of Yellow Bayou plantation at the time you made the levy?

Ans. 7. Mr. Wm. H. Todd.

Int'g. 8. During the time you knew the Yellow Bayou plantation who has been in possession & control of it?

Ans. 8. I know that Mr. Todd has been in possession of said plantation, but do not know who was the agent.

Int'g. 9. Do know where the Bellevue plantation is situated, with reference to the Yellow Bayou plantation heretofore described as levied on?

Ans. 9. It is situated east of and adjoining Yellow Bayou plantation.

Int'g. 10. In section 6 lying northeast of the Yellow Bayou plantation is there any considerable portion of it cleared, and is it a valuable tract of land, and what was it worth in September, 1876?

Ans. 10. A considerable portion of sec. 6 lying northeast of the Yellow Bayou plantation is cleared, and I regard it as a val-
1205 uable tract of land; said section of land is valued at $3,410, varying from one to ten dollars per acre, as per assessment books.

Int'g. 11. What was the value per acre of section seven in September, 1876?

Ans. 11. Section seven is valued at $3,200, as a whole, as per assessment books.

Cross-examined:

1 X Int'g. You stated, in your second direct interrogatory, that during the time you resided in Lake Village, since 1869, your occupation was that of clerk, deputy sheriff, & in the mercantile business. State whether or not you acted as deputy assessor during any part of that time.

Ans. 1 X. I acted as deputy assessor in making the personal assessment for the years 1877 & 1878.

2 X Int'g. Who gave you *in* the list of lands for assessment during said years 1877 & 1878?

Ans. 2 X. Capt. B. H. Smith, the defendant in this suit.

3 X Int'g. Do you know where Mr. Wm. H. Todd's residence was from the year 1869 up to the time of — death?

3 X Ans. I understood it was in Philadelphia, Pa. He came here occasionally—that is, to Chicot county, Arks.

1206 4 X Int'g. When you say that you know that Mr. Todd has been in possession of the Yellow Bayou plantation during the time you have known it, do you mean to say that Mr. Todd was actually residing on the property during that time?

Ans. 4 X. The idea I wished to convey was that he was the owner of it; took possession of it when here and lived on it when here. Mr. Todd made visits here during the time. I have known him & resided on the Yellow Bayou plantation during his said visits. Mr. Todd's visits here during the time were of several weeks' duration.

5 X Int'g. 9. How much of said section six is outside of the levee & in the swamp?

Ans. 5th X. I do not know.

6th X Int'g. In giving the valuation of sections six & seven do you give the same from the assessment or from other knowledge of their value?

Ans. 6 X. I know the sections to be valuable, but give my estimate of their value from the tax-books.

7 X Int'g. Have you ever had any executions in your hands other than the one of March 1st, 1876, favour of Wm. P. Halliday, before referred to, against Wm. H. Todd? And if so, state
1207 or describe them and with whom you settled the same.

(Objected to.)

Ans. 7 X. I have Wm. B. Street against Wm. H. Todd, F. P. Walker against Wm. H. Todd, J. M. Mills, H. S. Marshall against Wm. H. Todd, & Richard H. Scott against Wm. H. Todd. I settled the same with the defendant, B. H. Smith, acting for said Todd.

8 X Int'g. Examine the two papers herewith handed you and state if they are the settlement you made with said Smith of said executions.

Ans. 8 X. I have examined them, and they are.

9 X Int'g. Please endorse your name on the face of the papers and designate them by numbers.

Ans. 9 Int'g. I have endorsed them and endorsed them by numbers one & two (1 & 2).

10 X Int'g. In your official capacity or otherwise, when you had business with Wm. H. Todd, with whom did you transact that business when Mr. Todd was absent from Chicot county?

Ans. 10 X Int'g. With Benj. H. Smith, the defendant. I have no recollection of ever having had any other than official business with B. H. Smith for Mr. Todd.

11 X Int'g. Have you ever, as deputy collector of Chicot county, collected any taxes assessed on the property of Wm. H. Todd;
1208 and, if so, who did you receive the taxes from or make settlement with for said taxes?

Ans. 11 X. I have no recollection of ever having collected any taxes assessed for the property of Mr. Todd.

T. E. WILLING.

Deposition of C. H. Carlton.

Int. 1. State your name, residence, and occupation.

Ans. Charles H. Carlton; age, 40 years; residence, Lake Village, Chicot Co., Ark.; occupation, lawyer.

Int. 2. Are you acquainted with the defendants, Benjamine H. Smith & Jas. W. Cooper, and were you acquainted with Wm. H. Todd in his lifetime; &, if acquainted, how long have you been acquainted with Mr. Wm. H. Todd and the others?

Answer. I don't know Mr. Cooper. I know Mr. Smith, & knew Mr. Todd in his lifetime; have known Mr. Todd since about the first of the year 1866, and have known Mr. Smith since about the latter part of 1868; but of this I am not certain.

Int. 3. During the time you have known Mr. Todd where has he resided, and in what business has he been engaged?

1209 Answer. I have always understood that Mr. Todd has resided in Philadelphia, Pa. During that time he has been frequently here attending to his business. I don't know what other business he had been engaged in here except that of planting on the Yellow Bayou plantation & Bellevue plantation. My understanding has always been that his planting interests have been on the Yellow Bayou plantation in his own right & also on the Bellevue plantation in connection with Mr. Smith, the defendant.

Int'g. 4. During this time has Mr. Todd resided on the Yellow Bayou plantation with his family or otherwise; and, if so, during what portions of the year or years, and how long did he reside at such times?

Answer. I know that since the acquisition of the Yellow Bayou plantation by Mr. Todd in the year 1868 that Mr. Todd, for a number of years since 1868, — been upon the Yellow Bayou plantation— I mean that Mr. Todd was on the plantation at different times during several of the years since his acquisition of the place to the time of his death. I don't remember what particular years
1210 these visits were made. I was in the habit of seeing Mr. Todd whenever he came to the county, & my impression is that he was — most every year since his acquisition of the property up to the time of his death. There were some of the years in which he did not come. I can only now recall during that time but one year that Mr. Todd did not visit the county. I do not now remember what year that was, but it is recalled to my mind from the fact that he had a very severe physical affliction. Those visits were sometimes of very short duration, and at others longer, but my recollection is that his visits were generally from the latter part of the year until in the following spring. I know that one winter he occupied the Yellow Bayou plantation with his family.

Int'g. 5. During the time that Mr. Todd resided on the Yellow Bayou plantation did he exercise control and management of the same by way of gathering and disposing of the crop & contract & providing for the planting of the new crop; or, in other words, did he exercise such control and management over his property as owners usually exercise over like property?

1211 (Objected to by the defendant's counsel as leading.)

Answer. Apparently so for a portion of the time. I know of his making contracts with the hands and contracting for provisions for the hands on the place. The reason why I say apparently so is from — fact that I knew of his contracting for provisions for the hands on the place & making contracts with the hands on the place. I knew nothing about his gathering of the crop, except that when I visited him, which was frequent during his stays here, that he seemed to be exercising a general superintendance and control of that plantation. Mr. Todd was indebted to me & I was trying to effect a settlement with him, & during those visits he frequently spoke to me about shipping the crop; this is all I know about his disposal of the crop.

Int. 6. Do you or not know whether Mr. Todd left Yellow Bayou plantation under agent or agents during his absence therefrom?

Answer 6. I know that most every year since the acquisition of the place by Mr. Todd there has been some one on the place purporting to be manager. I don't know who put managers on
1212 the place. I have had occasion once or twice to go there in Mr. Todd's absence on private business, and the parties mentioned seemed to have control of the property. The parties referred to as having been the managers on the place, so far as I recollect now, were Mr. Smith, the defendant; Mr Mole, Mr. Kirk, Mr. Simmons, and Mr. White. I think Mr. Todd's two sons were for a time in charge of the place. I don't know how long these various parties remained on the place.

Int'g. 7. How long did Mr. Smith remain on the place, as near as you can recollect, and during what year or years?

Answer. I know that Mr. Smith was the first person who occupied the place after Mr. Todd acquired it, and that he was there a year or longer, but I don't know exactly how long.

Int'g. 8. Do you know how the cleared land on Bellevue plantation lays, with reference to the land not cleared?

Answer. I think I do, sir.

Int'g. 9. State it.

Answer. My impression is that there is about 250 acres of land in section 6 inside of the levee cleared. From the best of my observations there is about 125 acres in cultivation in section 7. My
1213 statements in this connection are made from observations taken from the map. I think there is about 500 acres of cleared land in section 5, though possibly some of this cleared land may not now be in cultivation, say 40 or 50 acres. Previous to the war nearly the whole of Bellevue plantation was in cultivation, but it has grown up with the exception of the part I mentioned, & has not been in cultivation since the war.

Int'g. 10. What was the value of the land in — 6 & 7 from September, 1876, to September 28, 1877?

Answer. Cleared land in sections 6 & 7 in 1876 & 1877 were worth, in my opinion, about from $25.00 to $30.00 per acre. The wood, the wood lands, in section 6 I don't consider worth anything. The remainder of the lands in sec. 7 are worth $2.50 to $3 per acre.

Int'g. 11. What parts of sections 6 & 7 were cleared in 1876 & 1877?

Answer. The south corner of section 6 and the N. p't of sec. 7.

Int'g. 12. What was the rental value of such cleared lands during the year 1877?

Answer. About $7.50 per acre.

1214 Cross-examination:

X Int'g. 1. What time did Mr. Todd acquire the Bellevue & Yellow Bayou plantations, from whom did he acquire them, and did he acquire any other property at the same time; and, if so, what?

(Objected to by council of plaintiff.)

Answer. Mr. Todd acquired Bellevue and Yellow Bayou plantations and various other wild lands in the counties of Desha and Phillips by virtue of a sale made by Johnson Chapman, receiver of the Chicot chancery court, some time in the spring or summer of the year 1868. The property was sold as the property of the estate of Junius W. Craig. Mr. Chapman having died before making his report, the deeds to the property was made in October, 1868, by C. W. Fry, who had been made receiver to succeed Mr. Chapman.

X Int'g. 2. Did Mr. Todd b-y such property on credit or for cash?

Answer. He bought it on credit—that is to say, that he had a mortgage on "Yellow Bayou," for which he had — decree of foreclosure to the amount of $58,000. This decree was to be sat-
1215 isfied to the amount of $30,000 bid on Yellow Bayou, and for the remainder he was allowed to give a bond and hold subject to a final determination of the rights of the creditors of said J. W. Craig's estate.

X Int'g. 3. Was not the annual visits of Mr. Todd to Yellow Bayou plantation in a great measure connected with the settlement of the indebtedness to the creditors of the estate of J. W. Craig above referred to, and did you or not represent any of the creditors of said estate as counsel?

Answer. I think the settlement and adjustment of his indebtedness to said estate of J. W. Craig and the prosecution of his own claims against the fund in his hand were in a great measure connected with his visits to Chicot county.

X Int'g. 4. Do you know whether or not the business referred to in your last answer has yet been settled?

—. There has never been any final settlement of the business, as the suits in relation to the same are still pending in the Chicot circuit court.

X Int'g. 5. Is Wm. H. Todd, one of the defendants herein, a party — that suit?

Answer. I think he is.

1216 X Int'g. 6. Do you know whether or not the defendants, Wm. H. Todd — B. H. Smith, have been in partnership planting and working Bellevue plantation?

Answer. I have always understood that they were so jointly interested.

X Int'g. 7. Since you became acquainted with Mr. Smith, in 1868, as stated in your examination-in-chief, where has he resided?

Answer. As I before stated, Capt. Smith resided for a year or more after I first knew him (I don't remember exactly how long) at the dwelling-house on Yellow Bayou plantation. From there he moved to Bellevue plantation and has resided there ever since.

X Int'g. 8. How are the plantations of Bellevue and Yellow Bayou relatively situated?

Answer. They are immediately adjoining.

X Int'g. 9. Was Mr. Todd in the habit of making more than one visit a year to Yellow Bayou plantation?

Answer. I think during the first three or four years after the war, when the litigation in regard to the estate of J. W. Craig was at

its highest, Mr. Todd was in the habit of coming to Chicot county to each term of the circuit court, which was twice a year. I think he was in the habit of visiting the county & the courts twice
1217 a year as late as the year 1870, and he might have been here more than once a year during subsequent years, but I cannot now remember.

X Int'g. 10. Do you know whether B. H. Smith has had the management, control, and supervision to any extent of the Yellow Bayou plantation; and, if so, to what extent & how long has he exercised such supervision?

Answer. I knew that for a year after he came to the county Mr. Smith lived on Yellow Bayou, and to all appearances exercised the full control and management of the same. After he left there and went to Bellevue I do not know to what extent his control or management of the place went.

It has been generally understood in the community that Mr. Smith, owing to his relations to Mr. Todd, had a general supervisory control over the place.

X Int'g. 11. Do you know whether he has exercised exclusive control and management of the Yellow Bayou plantation; and, if so, how long?

Answer. I have always understood that Mr. Smith exercised
1218 exclusive control and management of the Bellevue plantation ever since its purchase by Mr. Todd.

X Int'g. 12. Do you know whether B. H. Smith has been in the habit of control-ing and shipping the crops of Yellow Bayou plantation since he moved from there to Bellevue?

Answer. I do not. I know that since Mr. Smith'- removal to Bellevue he has shipped sundry lots of cotton to New Orleans for my account to pay an individual debt of Mr. Todd's, but don't know where the cotton was raised. This cotton had been promised to me by Mr. Todd. I don't remember who raised the several lots of cotton with one exception, and that was one lot of seven or eight bales, which had been raised by John Lewis on Yellow Bayou, and for which Mr. Todd had given me an order. This lot I received of Mr. Smith at Bellevue gin. I think I received altogether between 40 & 50 bales of cotton on my account, as above stated, and don't remember exactly how much.

X Int'g. 13. Do you remember whether the cotton was shipped to your account while Mr. Todd was here?

1219 Answer. I don't know. The cotton was shipped in sundry lots and at various times, the principal portion of it during the winter of 1873 & '74, and I don't know whether Mr. Todd was in the county at the time of the shipment of any particular lot or not.

X Int'g. 14. Do you know where the crop raised on Yellow Bayou during the years 1870, 1871, 1872, & 1873 was ginned?

Answer. I think it was all ginned on Bellevue plantation.

X Int'g. 15. Do you know whether or not during the absence of Mr. Todd from Chicot county B. H. Smith generally superintended

the Yellow Bayou and Bellevue plantations, such as paying taxes, assessing property, hiring hands, and shipping cotton?

Answer. I do not, except as far as I have before answered.

X Int'g 16. Did you ever draw any laborers' contracts for Capt. Smith for hands on Yellow Bayou?

Answer. I remember to have drawn one such contract; I don't remember in what year the contract was drawn.

X Int'g. 17. Do you know whether or not B. H. Smith, the defendant, exercised during Mr. Todd's absence a general super-
1220 visory control over Messrs. Mole, Kirk, and others which you named in your examination-in-chief?

Answer. I do not, except so far as I have before stated; I do not know any special control Smith had over said employees, only, as I said before, that he had during Mr. Todd's absence a general supervisory control over Mr. Todd's business and his property.

X Int'g 18. Do you know where the southwest corner of section six is, in township 15 south, of range 1 *is?*

Answer. I do not exactly.

X Int'g. 19. Do you know or are you famil*l*iar with the line between six & seven in Bellevue plantation?

Answer. I am not very famil*l*iar with it, but think I know about where it commences on their western boundary and its general course eastward from there.

X Int'g. 20. Are you a practical surveyor and have you ever surveyed any part of sections six and seven or been present when any such survey was ever made?

Answer. I am not; never did; never was.

X Int'g. 21. Were not the lands in sections six and seven subject to overflow in 1874 & 1875, 1876, & 1877, on account of the defects and breaks in the levee?

1221 —. I don't remember particularly the condition of Bellevue on account of overflow during the years mentioned, except in the year 1876; during that year, I know, there was a most disastrous overflow, and that most of all Bellevue went under the water; my impression is that the levees protecting the place broke in both seventy-four and seventy-five and the place was badly overflowed in both years; in 1877 I don't think the gap made in 1876 had been filled, but to what extent the place suffered I had no opportunity of knowing.

X Int'g. 22. What was an undivided half interest in said sections six and seven worth in September, 1876, with a real-estate-bank mortgage of about $10,000.00 on the whole of said two sections & the northeast quarter of section 18, in the same township, and a further mortgage of $7,000.00 on the whole of *the* Bellevue, including said two sections, six and seven?

Answer. I have already answered, to the best of my knowledge & belief, what was the market value of the land at that time; as to what proportion of the encumbrances named would fall upon
1222 sections six and seven I am unable to say, and the effect of the real-estate-bank mortgage would depend upon what kind of funds it could be paid in and what those funds could be bought at.

X Int'g. 23. Would not the incumbrances referred to in X interrogatory 22 have been well calculated to have prevented the property, sections six & seven, from bringing its full value at public sale nder execution?

Answer. I think they unquestionably would.

X Int'g. 24. When you say the cleared lands in sections six and seven were worth from $25 to $30 per acre in September, 1876, did you mean to say they were worth that in their exposed condition, subject to overflow, or did you mean to say that was their value when protected by an efficient levee?

Answer. I meant to say that that was their general market value at that time, in their then condition.

X Int'g. 25. Was $7.50 per acre rent collected on such lands during seasons when such lands were overflowed?

Answer. That depended on the extent of the overflow and how soon it went off. I have known lands similar to those, after
1223 they had been overflowed, make a good average crop. When I stated $7.50 as the rental value of that class of lands I meant to say that was about what they were held at in making contracts with laborers; but if the lands were so overflowed that no crop was made, then the rent was not generally collected.

The plaintiffs answering that they had further testimony to introduce, the examination is adjourned until to-morrow morning at 10 o'clock.

GEO. T. WILKINSON, *Clerk.*

FRIDAY, 10TH, A. M., *Nov'r* 28, 1879.

Examination met pursuant to adjournment. All parties being present, by att'y, and the plaintiffs desiring to take the deposition of Geo. T. Wilkinson, clerk of the Chicot circuit court, before whom these depositions are being taken, it is agreed that the same may be taken by him and certified as a part of these depositions without being sworn.

Interrogatory No. 1. State your name, age, residence, and occupation.

1224 Answer. Name, Geo. T. Wilkinson; age, 32 years; residence, Lake Village, Chicot county, Arkansas; occupation, clerk of the Chicot circuit court.

Int'g. 2. As such clerk, have you *in* charge of the records, judgements, executions, returns, & records of deeds and papers filed concerning same?

Ans. I have.

Int'g. 3. Have you in charge two executions issued upon a judgement in favor of J. McMurray & Co. against Wm. H. Todd and the returns of the sheriff thereon and certificate of purchase of the sale of the property levied on said executions; &, if so, will — file a copy of the same as a part of this your deposition that it may be identified?

Objected to by defendant.

Answer. I have, and herewith file certified copies of *of* the same as my deposition and identify the same by marking the same Exhibit-A & B.

Int'g. 4. Have you in charge an execution on the sales bond of Wm. P. Halliday by Eveline E. Bollivar & Wm. H. Todd and the return thereon? If so, file a certified copy of the same and identify it & make it a part of your deposition.

(Objected to.)

1225 Answer. I have, and herewith file a certified copy of the same as part of my deposition & identify the same by marking it Exhibit "C."

Int'g. 5. Have you — charge an execution for balance on said sales bond and the return of the sheriff on the same and a certificate of purchase executed for the property sold under said execution? If so, attach a certified copy of the same to this your deposition and identify the same.

(Objected to.)

Answer. I have, & herewith file a certified copy of the same as part of my deposition and identify the same by marking it Exhibit "D."

Int'g. 6. Have you in charge the complaint and proceedings in a suit by the defendant, B. H. Smith, against Wm. H. Todd, including the order of attachment and the return of the sheriff thereon & the execution and return thereon and certificate of purchase for the property under said execution? If so, attach and file a certified copy of the same as part of your deposition and identify the same.

(Objected to.)

1226 Answer. I have, and herewith file a certified copy of the same as part of this my deposition and identify the same by marking it Exhibit "E."

Int'g. 7. Have you in charge the deed executed by the sheriff of Chicot county to Benj. H. Smith for the lands purchased at the sales under the execution in favor of McMurray & Halliday above referred to? & if so, attach certified copies of the same and identify them.

(Objected to.)

Answer. I have, and herewith file certified copies of the same as part of this my deposition and identify the same by marking them Exhibits "G & H."

Int'g. 8. Have you in charge the assessment books for the years 1876 & 1877? If so, please make an extract of the assessed value of sections 6 & 7, t'w'p 15, 1 west, and attach the same to your deposition and identify the same.

(Objected to.)

Answer. I have in my charge the assessment made in the year 1876. I would state that the assessment of real estate is made but once in four years; consequently the assessment made in 1876 stands

for four years, and the valuation of all lands on the tax books for the four years subsequent to 1876 & copied from are the same
1226½ as in 1876. I herewith file an extract from the assessment book for 1876 showing the assessed value of sections 6 & 7, t'w'p 15, 1 west, as part of this my deposition and identify the same by marking it I.

Int'g. 9. Do you find upon the record book of judgments in your office a judgment in favor of Allen, Nugent & Co. against Wm. H. Todd, rendered on the 2nd day of Febr'y, 1878? If so, file a copy thereof and make it a part of your deposition and identify the same.

(Objected to.)

Answer. I have, and herewith file a certified copy of the same as part of my deposition and identify the same by marking it Exhibit "J."

Int'g. 10. Do you find upon the records of judgments in your office a judgment in favor of Thos. H. Allen against Wm. H. Todd, rendered on 2nd day of July, 1878? If so, file a copy thereof and make it a part of your deposition and identify the same.

(Objected to.)

Answer. I have, and herewith file a certified copy of the same as part of this my deposition and certify the same by marking it Exhibit "K."

1227 Int'g. 11. Have you in charge an execution in favor of J. W. Cooper against Wm. H. Todd, & the return of the sheriff on the same, & the certificate of purchase for the land sold under said execution? And, if so, please file a copy of the same and make them a part of your deposition and identify them.

(Objected to.)

Answer. I have, and herewith file certified copies of the same as part of my deposition and identify the same by marking it Exhibit "L."

Int'g. 12. Do you find in your office, upon the records therein, a judgment in favor of Messrs. Jurey & Gillis against Wm. H. Todd, Benj. H. Smith, & Isaac Cohen, rendered at the July term, 1876, of Chicot circuit court? If so, please file a certified copy of the same as part of your deposition and identify it.

(Objected to.)

Answer. I do, and herewith file a certified copy of the same as part of this my deposition & identify the same by marking it Exhibit "M."

1228 *Deposition of S. H. Holland.*

The plaintiffs then introduced S. H. HOLLAND, who, being known to me to be of lawful age & having been by me charged & sworn according to law, depose- as follows, viz:

Int'g. 1. State your name, residence, and occupation.

Answer. Name, S. H. Holland; age, 37 years; residence, Lake Village, Chicot county, Arkansas; occupation, sheriff of said county.

Int'g. 2. Are you acquainted with the defendant, Benjamin H. Smith; if so, how long have you known him?

Answer. I am acquainted with Mr. Smith, and have known him since the spring of 1872.

Int'g. 3. Were you acquainted with Wm. H. Todd during his lifetime; &, if so, how long did you know him previous to his death?

Answer. To the best of my recollection, I became acquainted with Mr. Todd in the winter of 1874.

Int'g. 4. Where did Mr. Todd reside during his lifetime—during the time you knew him?

1229 Answer. During the time he was in this county he lived on Yellow Bayou. Mr. Todd *Mr. Todd* was here during the winter seasons.

Int'g. 5. Did Mr. Todd while here exercise control of the Yellow Bayou plantation?

Answer. The only time I ever knew of his control-ing the place was in the winter of 1874, when I went there on some business.

In'g. 6. Who have you known to have been in charge of the Yellow Bayou plantation since you have known it?

Answer. I have known Mr. Mole and Mr. Kirk to have been on the place and apparently in charge, & I think anmother person, but I cannot call his hame.

Int'g. 7. Did you, in the year 1876, as sheriff of the county, have an order of attachment to you directed in the suit by the defendant Smith against Wm. H. Todd; &, if so, did you execute the same by attaching the property or any portion thereof of the def't Todd?

(Objected by def't.)

Answer. Yes, sir; I did. I executed said attachment by attaching a portion of the property of the defendant.

Int'g. 8. Have you now in your hand the original of said
1230 attachment, with the return on the same, and is a part of — E in the deposition of Go. T. Wilkinson a copy of said order & return?

Answer. I have, & the exhibit of Geo. T. Wilkinson marked E to his deposition is a true copy of the original, I having examined the same.

Int'g. 9. Was the release of the cotton & the attachment of the lands made under the direction of the plaintiff given at one time?

Answer. I don't remember the dates of the directions, but I don't know when I got the instructions to levy on the lands. I know that I received a written order, written in pencil, from Mr. Smith to re-

lease the cotton. I also received instructions from Mr. Smith to levy on the lands about the same time that the cotton was released.

Int'g. 10. Who pointed out the property to be attached under the above order of attachment?

Answer. I went there to the place and showed Mr. Mole the order of attachment, & he pointed out the property. Mr. Mole went over the place with me and seemed to be apparently in charge, &
1231 showed me the property. The property levied on was left with Mr. Mole, with the consent of Mr. Smith.

Int'g. 11. Was any suggestions or instructions given to you in regard to levying upon the cotton levied on?

Answer. Yes, sir; Mr. Smith directed me to levy on all the cotton on the place—that growing in the field and that in pens. I told him it would be dif-icult to take charge of the growing crop. I had quite a conversation in regard to getting Mr. Todd's interest out of the growing crop in its then condition. He then suggested that I leave it in charge of Mr. Mole as custodian. I levied on all the growing crop in the fields.

Int. 12. What became of the property so levied on other than the cotton released?

Answer. The property was afterwards sold under the order of court, & Mr. Smith became the purchaser thereof.

Cross-examined:

1 X Int'g. You state, in your answer to the 4th interrogatory, speaking of Mr. Todd, one of the defendants, that during the time he was in the county he lived on Yellow Bayou. Did you mean Mr. Todd ever had his home on Yellow Bayou, or do you
1232 mean to say that during his visits to Chicot county he resided on Yellow Bayou?

Ans. 1 X. I don't know where he claimed to live nor where he claimed his home. All I know is I found him on the Yellow Bayou plantation when I had business with him.

2 X Int'g. Did you always find him on the Yellow Bayou plantation when you had business with him?

Ans. No, sir.

3 X Int'g. Do you, since your acquaintance with Mr. Todd, — how often he visited Chicot county, how long he usually staid during a visit, and at what seasons of the year he made his visits?

Ans. 3 X. Mr. Todd, I think, came here every winter since I have known him. As near as I can recollect, Mr. Todd remained in the county about a month or two at a time during his said visits.

4 X Int'g. Do you or not know that Mr. Todd's home was in the city of Philadelphia, Pa.?

Ans. 4 X. My impression is that is where he went to when he left here after his visits.

5 X Int'g. Do you or not know that Mr. Smith, the defendant, had a general superintendance and control over Mr. Todd's business generally in Chicot county, and particularly over the Yellow
1233 Bayou plantation and his interests in the Bellevue plantation, during the periods of Mr. Todd's absence from the county?

Ans. 5 X. It has been my understanding that Mr. Smith, the defendant, exercised such superintendance and control.

6 X Int'g. Did you have an attachment against Mr. Todd in a suit by Jury & Gillis, and did you lay said attachment on any of the cotton levied on under Mr. Smith's attachment? If you answer yea, state what cotton, & if the same was released under bond and at what time, and who were the securities on that bond.

Answer. I had an attachment against Mr. Todd in a suit by Jury & Gillis. I levied said attachment on the cotton in pens, which was afterwards levied on by me under the attachment — favor of Smith against Todd. The same cotton was levied on in both instances, except that growing in the field. The attachment — favor of Jury & Gillis was dated June 6th, 1876. I levied on said cotton June 7, 1876. This cotton was released on a bond given on B. H. Smith, one of the defendants, & Isaac Cohen, sureties, said bond being approved July 15, 1876.

7 X Int'g. With whom was the cotton levied on under the Jury & Gillis attachment left as custodian?

1234 Answer. The cotton was left on the Yellow Bayou plantation, in charge of Mr. Mole as custodian.

8 X Int'g. As near as you can remember, about what time did you release the cotton levied on under the Smith attachment?

Answer. I don't know when I did get the order to release.

By agreement of counsel for the respective parties hereto the further taking of depositions in this cause is postponed until the 15th day of Dec., A. D. 1879, to which time this examination stands adjourned.

GEO. T. WILKINSON, *Clerk.*

[In pencil:] Exhibits in Geo. T. Wilkinson's deposition:
On pages 23, A & B.
" 24, "E" & "C" & "D."
25, "E," "G," "H."
26, I, J, K.
27, "L," "M."

1235 *Exhibit* 1 *to the Deposition of T. E. Willing.*

Received, Luna, Ark., October 31st, 1884, of B. H. Smith, on execution of Wm. B. Street *vs.* Wm. H. Todd, dated Oct. 15th, for 633.93, $118.41, currency, payment in full for costs and attorneys' fees in said cause, and his draft, thirty days after date, to John G. B. Simms for $573.07 on Bussey & Co. in full settlement of balance on said execution; also $26.35 in currency, payment in full of all costs in the case of F. C. Walker *vs.* Wm. H. Todd, execution from the Federal court, Little Rock, favor J. M. Miles, U. S. M.; also, in settlement of said execution, his, said Smith's, draft on Wm. H. Todd, Philadelphia, thirty days after sight, for $129.65.

The draft above mentioned for $573.07 was given for $636.46, but afterwards it was discovered that there was an error of $63.39 in said

Simms' favor, which, by agreement between the parties, he,
1236 said Simms, is to turn over to said Smith upon the payment of said draft.

JAS. W. MASON, *Sheriff*,
By T. E. WILLING, *Deputy*.

Endorsed on face thereof: "T. E. Willing, No. 1."

Endorsed: Filed Feb. 9, 1884. Ralph L. Goodrich, clerk.

1237 *Exhibit 2 to Deposition of T. E. Willing.*

Received, Lake Village, Ark., July 12th, 1874, of Benj. H. Smith, Esqr., his sight draft on Mess. Richardson & May, New Orleans, La., for the sum of $192.60, in settlement of a certain execution, No. 44, issued by the clerk of the circuit court of Chicot county, bearing date June 7th, 1876—Richard Scott *vs.* Wm. H. Todd.

Am't of execution	159 03
Interest on same	8 50
Clerk's fees	6 22
Sheriff's "	18 82
	$192 60

Upon the payment of said draft this shall be receipt in full for the satisfaction of said execution.

Sheriff's office, Chicot county, Arkansas.

S. H. HOLLAND, *Sheriff*,
By T. E. WILLING, *Deputy*.

Endorsed on face thereof: T. E. Willing, No. 2.

Endorsed: Filed Feb. 9, 1884. Ralph L. Goodrich, clerk.

1238 *Exhibit "A" to the Deposition of T. E. Willing.*

STATE OF ARKANSAS, *County of Chicot:*

The State of Arkansas to the sheriff of Chicot county, Greeting:

You are commanded that of the estate of William H. Todd you cause to be made the sum of eleven thousand six hundred and eighty-nine dollars, which William P. Halliday, late in our Chicot circuit court, in chancery, recovered against him for money due said Halliday from the estate of Junius W. Craig, deceased, as expenses of administration, and decreed to be paid out of the assets of said estate in the hands of said Wm. H. Todd, and payment thereof to be enforced by execution against him, the said Wm. H. Todd.

The said eleven thousand six hundred and eighty-nine dollars was decreed to be paid in three installments, as follows: First,
1239 the sum — $3,897.10, together with ten per cent. per annum interest thereon from May 15th, 1873, be paid on the 30th day of Jan'y, 1874; and, second, the sum of $3,896.04, together with ten per cent. per annum interest thereupon from May 15th, 1873, be paid as follows: The interest to January 30th, 1874, to be paid at

the time, and the interest from Jan'y 30th, 1874, to be paid on July 30th, 1874, and that said sum of $3,896.04, and the interest from July 30th, 1874, to Jan'y 30th, 1875, be paid on Jan'y 30th, 1875; and, third, the sum of three thousand eight hundred and ninety-six dollars, together with ten per cent. per annum interest thereon from May 15th, 1873, be paid as follows: The interest on said sum up to Jan'y 30th, 1874, to be paid on that day, and that the interest be paid semi-annually thereafter until Jan'y 30th, 1876, when said principal sum of $3,896.00, with the interest then due, is to be paid, and that said payments of principal or interest be made
1240 without days of grace, and that in default of payment of any of said installments of principal or interest then and in such case the whole of said claim of eleven thousand six hundred and eighty-nine dollars, with interest thereon as aforesaid, that may remain unpaid shall become due and payable, and may be enforced by execution, with interest thereon from the 15th day of May, 1873, until paid, as above set forth; also the sum of $— which was adjudged to the said Wm. P. Halliday for his costs on this matter expended, and that you have said sums of money within sixty days to render to the said Wm. P. Halliday for his debt, interest, and costs aforesaid.

Witness my hand and the seal of the circuit court, hereto affixed this the 1st day of March, A. D. 1876.

H. W. GRAVES,
Cl'k C't C't, in Ch'y.
By GEO. T. WILKINSON, *D. C.*

1241 MARCH 1ST, 1876.

The within execution is subject to the following credits for money paid on said decree—that is to say: $1,173.35, of date April 1st, 1874; one thousand dollars, of date April 20th, 1874; $688.95, of date April 1st, 1875; $594.68, of date May 25th, 1875, and two thousand dollars, of date June 5th, 1875.

D. H. REYNOLDS,
Att'y for Halliday.

Attest: H. W. GRAVES, *Cl'k*,
By GEO. T. WILKINSON, *D. C.*

Endorsed as follows: No. 38. Wm. P. Halliday *vs.* Emma J. Wright, ex'tr., &c. Execution. To sheriff of Chicot county. Returnable 60 days from March 1st, 1876. Decree. May term, 1873. Ch'c'y. Rec. "D," page 77. Original am't of decree, $11,689.00. Subject to credit named within, $—. Interest from May 15th, 1873, as set forth herein. Clerk's costs, $8.80. Sheriff's costs, $210.67.

Sheriff's Return.

This writ, which came to hand on the day of issuance, I
1242 duly executed by levying on the following-described lands, to wit: Fr'l sec. 12, N. f'r'l ½ sec. 11, undivided half of south of section 11, fractional section 14, S. E. part N. E. ¼ sec. 10, sec. 23, S. W. ¼ sec. 13, E. ½ of N. W. ¼ sec. 24, E. ½ N. E. ¼ sec. 22, and E. ½ of S. E. ¼ sec. 15, all in township 15 south, of range 2 west, and adver-

tised the same, according to law, for sale on Thursday, the 6th day of April, 1876; and on said 6th day of April I offered said lands for sale at public auction, at the front door of the court-house of Chicot county, within the hours for judicial sales, and sold the following portion of said lands, as shown by the annexed plat list, marked Exhibit "A," the total amounting to $9,755.00 *dollars*, sufficient to cover amount of this execution, including debt, interest, and cost. Said lands were sold on a credit of three months, as shown by the annexed advertisement of sale, which is herewith filed and
1243 made part of this return this April 6th, 1876.

S. H. HOLLAND, *Sheriff*,
By T. E. WILLING, *D. S.*

Said lands were sold to Eveline E. Bolivar, she executing bond for the same, with Wm. H. Todd as surety, which bond is herewith returned.

S. H. HOLLAND, *Sheriff*,
By T. E. WILLING, *D. S.*

Bond.

Eveline E. Bolivar, principal, and Wm. H. Todd, surety, do bind ourselves to pay to William P. Halliday, within three months from the date hereof, the sum of nine thousand seven hundred and fifty-five dollars, with interest thereon, according to the terms of the decree, from this date, being the purchase-money of the following-described tracts or parcels of lands:

N. E. ¼, N. E. ¼, sec. 12, township 15, 2 W	$475 00
S. E. ¼ of N. E. ¼, " " " " "	400 00
N. W. ¼ of N. E. ¼, " " " " "	
S. W. of ¼ N. E. ¼, " " " " "	2,500 00
N. E. ¼ of ¼ S. E. ¼, sec. 12, township 15, 2 W	400 00
1244 S. E. ¼ of S. E. ¼, " " " " "	150 00
N. W. ¼ of S. E. ¼, " " " " "	200 00
S. W. ¼ of S. E. ¼, sec. 11, township 15, 2 west	200 00
N. E. ¼ of N. W. ¼, " " " " "	
S. E. ¼ of N. W. ¼, " " " " "	750 00
N. W. ¼ of N. W. ¼, " " " " "	
S. W. ¼ of N. W. ¼, " " " " "	350 00
N. E. ¼ of S. W. ¼, " " " " "	300 00
S. E. ¼ of S. W. ¼, " " " " "	300 00
N. W. ¼ of S. W. ¼, " " " " "	300 00
S. W. ¼ of S. W. ¼, " " " " "	200 00
N. E. ¼ of N. E. ¼, " 11, " " "	
S. E. ¼ of N. E. ¼, " " " " "	400 00
N. W. ¼ of N. E. ¼, " " " " "	
S. W. ¼ of N. E. ¼, " " " " "	350 00
N. E. ¼ of N. W. ¼, " " " " "	
S. E. ¼ of N. W. ¼, " " " " "	350 00
N. W. ¼, N. W. ¼, " " " " "	
S. W. ¼, N. W. ¼, " " " " "	350 00
S. E. ¼, S. W. ¼, " " " " "	400 00

Und. ½, N. E. ¼ of S. E. ¼, sec. 11, township 15, 2 west	120 00
Und. ½, S. E. ¼ of S. E. ¼, " " " " " "	150 00
Und. ½, N. W. ¼ of S. E. ¼, " " " " " "	150 00
Und. ½, S. W. ¼, of S. E. ¼, " " " " " "	150 00
Und. ½, N. E. ¼, S. W. ¼, sec. 11, town. 15, R. 2 W.	250 00
" " N. W. ¼ of S. W. ¼, " " " " " " "	230 00

1245 Which were this day sold by S. H. Holland, sheriff of Chicot county, Arkansas, in satisfaction of an execution which — issued from the office of the clerk of the Chicot circuit on the court first day of March, 1876, in favor of said William P. Halliday against William H. Todd for the sum of eleven thousand six hundred and eighty-nine dollars ($11,689.00) *dollars*, debt and interest, with costs, less certain credits endorsed on said execution, and leaving due this day $9,261.10.

Given under our hands this 6th day of April, 1876.

E. E. BOLIVAR. [SEAL.]
WM. H. TODD. [SEAL.]

Attest: S. H. HOLLAND, *Sheriff*,
By T. E. WILLING, *D. S.*

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the preceding 5 pages and the above writing on this page contain a true and
1246 correct transcript of the original execution on file in my office issued on the decree rendered in the Chicot circuit court, in chancery, against Wm. H. Todd in favor of Wm. P. Halliday, together with the sheriff's return thereon and the bond executed by Mrs. E. E. Bolivar for the purchase-money of the lands sold — purchased at the sale under said execution, as they severally appear on file in my office.

Witness my hand and the seal of said court, hereto affixed this 26th day of November, 1879.

[SEAL.] GEO. T. WILKINSON, *Clerk, &c.*

Endorsed thereon: "Exhibit A" to the deposition of T. E. Willing. Having examined the within, I state that it is a true copy of the original.

Endorsed: Filed Feb. 9, 1884. Ralph L. Goodrich, clerk.

1247 *Letters of Administration.*

THE STATE OF ARKANSAS, *County of Chicot:*

In the Probate Court of said County.

Affidavit to obtain letters.

L. H. Springer, here applying for letters of administration on the estate of William H. Todd, late of said county, being first duly sworn, deposes and says that the said William H. Todd departed this life in —, on or about the — day of May, A. D. 1879; that the

said William H. Todd died making a will; that to the best of his knowledge and belief the value of the estate of the deceased is about the sum of one thousand dollars; that *to* the names and residence of the heirs of deceased is as follows, viz., J. V. Smith, who resides in Chicot county, Arkansas; Mrs. Eveline Bolivar, Mrs. Jennie W. Bowles, Mrs. Eva Strong, Richard Todd, Derringer Todd, and
1248 Willie Todd, all of whom reside in the city of Philadelphia and vicinity, State — Pennsylvania.

And further deposes and says that he will make a perfect inventory of and faithfully administer all and singular the goods and chattels, rights and credits, of the deceased, and pay his debts as far as the assets which may come to his hands will extend and the law direct; and that he will account for and pay over according to law all assets which shall come to his hands or possession, so help me God.

L. H. SPRINGER.

Subscribed and sworn to July 30, '79.

GEO. T. W. KINSON, *Cl'k.*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* clerk of the probate court within and for the county and State men-
1249 tioned within, do hereby certify the within is a true and correct copy of the original affidavit made by L. H. Springer for letters of administration on the estate of William H. Todd, deceased, as the same appears of file in my office.

Witness my hand and the seal of said court, hereto affixed this the 26th day of Oct., 1883.

[SEAL.] GEO. T. W. WILKINSON, *Clerk.*

Endorsed: Filed in my office Aug. 4th, '79. Geo. T. W. Wilkerson, cl'k.

Administrator's Bond. Estate of William H. Todd, Deceased.

STATE OF ARKANSAS, *County of Chicot:*

In the Court of Probate, July 30th, A. D. 1879.

Know all men by these presents that we, L. H. Springer, —— ——, are held and firmly bound unto the State of Arkansas in the
1250 just and penal sum of two thousand (2,000) dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators, firmly by these presents.

Witness our hands and seals, at Lake Village, Arkansas, this 30th day of July, A. D. 1879.

The condition of the above obligation is such that if the above-bounden L. H. Springer, administrator *c. t. a.* of all and singular the goods and chattels, rights and credits, of William H. Todd, deceased, shall make or cause to be made a true and perfect inventory of all and singular the goods and chattels, rights and credits, of the said deceased which have or may come to the hands, possession, or knowledge of him, the said L. H. Springer, or into the hands or possession of any other person for him, and the same so made

shall return and exhibit in the office of the clerk of the court
1251 of probate for the county of Chicot within sixty days from date of the above obligation and all and singular the goods and chattels, rights and credits, of the deceased which shall come to the hands, possession, or knowledge of him, the said L. H. Springer, shall well and truly administer according to *to* law and pay the debts of the deceased as far as the assets will extend and the law directs; and further make or cause to be made just and true account of his administration, and make due and proper settlement thereof from time to time according to law, or the lawful order, sentence, or decree of any court having competent jurisdiction; and shall moreover well and truly do and perform all other matters and things touching such administration that are or may be prescribed by law or enjoined on such administrator by the lawful order, sen-
1252 tence, or decree of any court having competent jurisdiction, then the above obligation be void and of no effect; otherwise to remain in full force and virtue.

In testimony whereof we have hereunto set our hands and affixed our seals the day and year first above written.

L. H. SPRINGER.
BENJ. H. SMITH.
J. F. ROBINSON.

Approved and recorded Aug. 4th, '79.

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* clerk of the probate court within and for the county and State aforesaid, do hereby certify that the within is a true and correct copy of the bond executed in the matter therein mentioned as the same appears of file & record in my office.

1253 Witness my hand and *and* the seal of said probate court, hereto affixed this the 26th day of October, 1883.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

Endorsed: Filed and approved by the court this 4th day of August, A. D. 1879, and recorded in Book C, page 62. Geo. T. Wilkinson, clerk.

Letters of Administration.

STATE OF ARKANSAS, *County of Chicot:*

The State of Arkansas to all persons to whom these presents shall come, Greeting:

Know ye that whereas William H. Todd, of the county of Philadelphia, died intestate, as it is said, on or about the — day of May, A. D. 1879, having at the time of his death personal property
1254 in the State which may be lost, destroyed, or diminished in value if speedy care be not taken of the same, to the end thereof that the said property may be collected, preserved, and disposed of according to law, we do hereby appoint L. H. Springer, of the county of Chicot, administrator of all and singular the goods

and chattels, right, and credits which were of the said Wm. H. Todd, at the time of his death, with full power and authority to secure and dispose of the said property according to law and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or hereafter may be required of him by law.

In testimony whereof I, Geo. T. Wilkinson, clerk of the circuit court and *ex officio* clerk of the court of probate in and for the
1255 county of Chicot aforesaid, have hereunto set my hand and affix- the seal of said court, at said office, this 4th day of August, A. D. 1879.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

Recorded & delivered Aug. 4th, '79.

I, Geo. T. Wilkinson, clerk of the circuit court & *ex officio* clerk of the probate court within and for the county and State mentioned within, do hereby certify that the above and foregoing is a true and correct copy of the original letters of administration granted to L. H. Springer on the estate of William H. Todd, deceased, as the same appears of record in my office.

Witness my hand and the seal of said court, hereto affixed this the 29th day of Oct., 1883.

[SEAL.] GEO. T. WILKINSON, *C'l'k,*
By C. L. MEAD, *D. C.*

Endorsed: Filed Feb. 9, 1884. Ralph L. Goodrich, clerk.

1256 *Allowance.*

Est. Wm. H. Todd to B. H. Smith.

To am't of judgment of the Chicot circuit court rendered July 25th, 1877 (at the July term thereof)		$8,000 00
To int. on same, @ 6 % from July 25, 1877, to April 1, 1878		328 00
		8,328 00
By am't collected on execution dated Feb'y 22, '78	$4,055	
Less costs—clerk's, $7.75; sheriff's, 83.80	91 55	
		3,963 45
Am't due April 1st, 1878		4,364 55

STATE OF ARKANSAS, } *sct:*
County of Chicot, }

I, B. H. Smith, do solemnly swear that nothing has been paid or delivered towards the satisfaction of the above demand except what is credited thereon, and that the sum of $4,364.55 principal, with $550.66 interest thereon at 6 % from April 1st, 1878, to May 8, 1880, is justly due, so help me God.

BENJ. H. SMITH.

1257 Subscribed and sworn to before me this 8th day of May, 1880.

GEO. T. WILKINSON,
Cl'k P'b't. C't.

Endorsed thereon: "Examined, approved, and allowed this 8th day of May, 1880. L. H. Springer, adm'r. Filed in my office May 8th, 1880. Geo. T. Wilkinson, clerk."

STATE OF ARKANSAS, *County of Chicot:*

I, Geo. T. Wilkinson, circuit — clerk and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that the foregoing page and the above writing on this page contains a true and correct copy of the account of B. H. Smith *vs.* Est. Wm. H. Todd as the same appears of file in my office.

Witness my hand and the seal of said court, hereto affixed this 12th day of May, A. D. 1880.

GEO. T. WILKINSON, *Clerk,*
By W. W. WILKINSON, *D. C.*

Endorsed: Filed Feb. 9, 1884. Ralph L. Goodrich, clerk.

1258 *Deposition of J. B. Lallande.*

My name is John B. Lallande; I am a commission merchant of this city; was a member of the firm of Allen, Nugent & Co., of this city, as well as T. H. & J. M. Allen & Co., also of this city; always engaged in the cotton factorage and commission business, said firms being now in liquidation, and I am the only one of the members of either of said firms at present in this city.

My firm of T. H. & J. M. Allen & Co. did business with a man by the name of Isaac Cohen. This business began several years prior to 1875, and lasted until July, 1879, and on 7th July, 1879, Isaac Cohen still owed us a balance of seventeen hundred and thirty-four $\frac{71}{100}$ dollars, $1,734.71, which balance remains still due and unpaid, with 8 % interest from that date.

Question. What was the state of accounts between your
1259 said firm and said Isaac Cohen on the 31st March, 1876?

Ans. Isaac Cohn owed T. H. & J. M. Allen & Co. a balance on the first of April, 1876—($5,587.77) fifty-five hundred and eighty-seven .77 dollars.

We threatened to sue Mr. Isaac Cohen, & did sue him, in the late sixth district court for the parish of Orleans, under the number of 8638 of the docket, on 31st March, 1876, by attachment under our State laws.

Petition and citation served on Isaac Cohen on the 4th April, 1876, in person.

On April 17th, 1876, default was entered.

We recovered judgement in this case.

Counsel now offers a certified copy of said judgement, produced and filed as Exhibit "A" and *ad*dentified by me, commissioner, with the deposition of this witness.

Ques. What amounts were recovered by plaintiff in said suit, at what dates, and what balance remains unsatisfied on said judgement?

Ans. On the 10th May, 1876, we recovered by cash of
1260 Richardson & May ($3,248.72) three thousand two hundred and forty-eight $\frac{72}{100}$ dollars; on 20th January, 1877, ($200) two hundred dollars, & on 7th July, ($547.34) five hundred & forty-seven $\frac{34}{100}$ dollars. Interest was not charged on said account after 1st April, 1876, either debit or credit.

Ques. Under said suit No. 8638 was any property, &, if so, what kind of property, attached outside of the attachments in the hands of Richardson & May & Buckner & Co.?

Ans. Yes, sir; the three notes of W. H. Todd were taken possession of by the sheriff, all three dated Luna, Arkansas, January 23rd, 1875, all three to the order of Isaac Cohen, each for the sum of ($1,666.66) sixteen hundred & sixty-six .66 dollars, and by him endorsed, payable, respectively, one, two, and three years after date, with interest at 10 % per annum from date until paid.

These notes were secured by lien & mortgage deed of trust
1261 on lands in Chicot county, Arkansas. I have no copy of the deed of trust with me. The sheriff seized them in our hands & sold them under execution for the sum of two hundred dollars ($200). The purchasers were the plaintiffs. The notes were subsequently forwarded to attorneys in Arkansas to bring suit against W. H. Todd. I think General Reynolds brought two suits upon these notes, but the records in Arkansas will show. I know Benjamin H. Smith, of Chicot —, Arkansas; have seen him in our office, and transacted business with him there as a partner of the firm of Todd & Smith, of that place.

Ques. When did your business with the firm of Todd & Smith commence; when did it end?

Ans. I think our business began with Todd & Smith in 1868, and, I believe, ended in 1869. I have copies of two accounts current with said firm of Todd & Smith.

Being shown exhibits being marked Exhibits "B" & "C,"
1262 witness is asked what he knows relative thereto, & of the various items therein set forth.

Ans. They are correct; and there is one item therein under — of 7th November, 1868, which refers to cash paid November 7th, 1868, of ($2,047.79) two thousand & forty-seven $\frac{79}{100}$ dollars, composed of two items, one, ($200) two hundred dollars, paid Mr. Smith as a member of that firm, and another item of ($1,847.79) eighteen hundred & forty-seven $\frac{79}{100}$ dollars, paid Mr. Smith likewise for said firm. I have a receipt for the last-named sum; it is in the handwriting of Mr. Smith—that is, the signature.

Counsel offers in evidence said receipt marked Exhibit "D," which is identified by me, commissioner, with the foregoing deposition.

Ques. Mr. Lallande, have you since adjournment made or
1263 had made the account of T. H. & J. M. Allen & Co. with Isaac Cohen, embracing the interest account?

Ans. Yes, sir; I have overlooked the books and had the account made by our book-keeper up to December 11th, 1883.

Being shown document Exhibit E, — says the same is said account & it is correct.

The same is now offered by plaintiff. The document marked Exhibit "E" is objected to for the reason that heretofore it appears that in 1876 a judgement was obtained by these plaintiffs against Isaac Cohen fixing the amount of indebtedness as existing between the plaintiffs & the said Cohen, & that said judgement has been offered in evidence & must abide as the fixed and determinate debt at the date mentioned, no transactions between the parties having existed since, as appears by the testimony. It is also objected to as irrelevant & not within the issues of the case as made.

1264 Ques. How did it occur that your firm purchased under the execution or judgement against Isaac Cohen the three notes of $1,666.66 each you have described made by W. H. Todd?

Ans. We were the highest & last bidders of the notes & bought them in. We did not think they were worth any more, for there were whole lots of liens resting on the property recorded which we discovered were fraudulent & simulated, & we instructed General Reynolds to bring suit upon the notes we so purchased.

All that portion of this answer not responsive to the question is objected to.

Ques. Did you cause any examination, and, if so, what, to be made of the records in Chicot county relative to recordations of purported mortgages against property of William H. Todd there located?

Ans. Yes.

Ques. By whom?

Ans. We instructed General Reynolds to do so. We
1265 ordered on his report proceedings taken to have the same decreed invalid. Being satisfied in our own minds they were not valid, we ordered proceedings instituted to put them aside.

Ques. Can you produce the account of your house with Isaac Cohen in which you instituted the proceedings here in our State courts referred to.

Ans. Yes; here it is.

Counsel for plaintiff offers exhibit marked "F."

Ques. Have you the accounts of your then firm with W. H. Todd, of Chicot Co.?

Ans. Yes, sir.

Ques. Are those they?

Ans. Yes, sir. (Witness, shown accounts, states those are they, and that they are correct.)

Counsel for plaintiff now offers same to be marked Exhibits "G," "H," "I," "J," "K," & "L."

These exhibits are objected to for the reason that there is nothing in the pleadings that authorize their introduction; they are
1266 irrelevant, & no foundation has been laid in any testimony taken thus far authorizing such offer.

Ques. Have you any letters from W. H. Todd concerning any of his business transactions with your firm?

Ans. Yes.

Being produced, they are now offered by counsel for plaintiff, and are identified as Exhibits "M" & "N."

Objected to for reasons already stated in previous objection.

Ques. Who is the W. H. Todd whose name is signed to those letters?

Ans. A member of the firm of Todd & Smith, of Chicot Co., Arkansas, a partner of B. H. Smith. I have no other letters or papers. I sent them all to my attorney, General Reynolds.

Ques. What connection or transactions did you have with or what control was exercised by B. H. Smith over the cottons of Todd & Smith & W. H. Todd shipped to your house by them or either of them?

Ans. We dealt with them as partners, recognizing the right
1267 of either to draw or give instructions about the business. Both drew drafts and receipted for monies.

Cross-examination by J. S. WHITAKER, representing repondents:

Ques. How much money did you receive on the judgements of T. H. & J. M. Allen & Co. from Richardson & May?

Ans. Thirty-two hundred forty-eight $\frac{72}{100}$ dollars.

Ques. How much did you receive from Buckner & Co.?

Ans. Five hundred & forty-seven .34 dollars, less cost of court in both cases, as will be more fully shown and explained in accounts current hereinbefore filed.

Ques. I noticed that you attached 32 bales of cotton in the hands of Buckner & Co. Do I understand you to say that the entire proceeds of 32 bales of cotton, after the deduction of costs of court, was the amount you mentioned?

Ans. We attached funds in the hands of Buckner belong-
1268 ing to a man by the name of Bergman, claiming that Isaac Cohen had some interest in it which we could not prove. Mr. Burgman consented, through his attorneys, to allow us to retain five hundred and forty-seven .34 dollars, claiming that was all Isaac Cohen had in the funds, if we would drop proceedings, which we did.

Ques. Did you not afterwards reattach said cotton under a second garnishment in the hands of Buckner & Co.; &, if yea, what did you realize from the second seizure?

Ans. After receiving the $547.34 we made no further attachment.

Ques. From whom did you receive said $547.34?

Ans. Through our attorneys, Breaux, Fenner & Hall, we received $547.34 from the garnishment, and that is all we have received from that day to this.

Ques. From whom did they receive the $547.34.

1269 Ans. They received it from the garnishment suit against Buckner & Co.

Ques. Did they receive it from Bergman or from Buckner & Co.?

Ans. They received it from the suit. They received it in the suit of T. H. & J. M. Allen & Co. *vs.* Isaac Cohen, Buckner & Co., garnishees. I do not know from whom they received it personally.

Ques. To whom did the 32 bales of cotton belong?

Ans. We thought that Isaac Cohen had some interest in it.

Ques. Did you take any evidence on the matter of ownership?

Ans. We took all we could get, and worked hard to get more, and failed to get any more than the records of court will show.

Ques. You have spoken of three certain notes of $1,666.66, each drawn by W. H. Todd, as having been taken possession — by the sheriff under execution in the case of T. H. & J. M. Allen & Co. *vs.* Isaac Cohen, advertised & sold & purchased by your said firm

1270 for $200. How or in what manner did said notes come into your hands, and for what purpose, before said seizure, and at what time?

Ans. The three notes were indorsed by Isaac Cohen, signed & delivered to us as collateral security, pledged & pawned to us as collateral security, with the right to sell them. At the expiration, when the crop of 1875 was marketable—at the expiration of that year—we were to give him time to move his crop. I can't fix the exact date as to the time, because I have not the books & proper papers before me.

Ques. How long had you held these notes in your possession before you ordered them to be seized by the sheriff?

Ans. Between six & twelve months, but I am not sure about these dates; we got them in possession before their maturity.

Ques. You have mentioned that these notes were pledged to you by Isaac Cohen, with a right to sell the same, & that he had

1271 endorsed them before placing them in your possession. Will you produce the pledge by which these notes were handed over to you?

Ans. I have not the pledge with me. I received the notes in person from Isaac Cohen, stating, when handed to me, to be his collateral security of our claim against him.

Ques. I am led to conclude from your answer, that you have not the pledge with you, that there is one in existence; where is it?

Ans. I don't know.

Ques. Was such pledge given to you in writing?

Ans. I think it was, as we were always in the habit of taking such pledges in writing, with few exceptions. It being so long ago since this occurred, and we having papers in our possession of the large business done by the firms (of which I am connected) for forty-five years, I have not been able to find it.

Ques. Have you made search for this document among the papers of T. H. & J. M. Allen & Co.?

Ans. I have.

1272 Ques. When did you make this search?

Ans. Lately, within the past ten days.

Ques. When you took these obligations from Isaac Cohen as collateral security were you not aware of the credit and ability of W. H. Todd to meet these notes at maturity? Had you not done a large business with Mr. Todd for several years previous, & did you not know at that time that he was reputed to be wealthy?

Ans. No.

Ques. What advance did you make to Isaac Cohen on the credit of these obligations?

Ans. I refer to the accounts hereinbefore filed, marked "E & F," & to the judgement we obtained in the courts here.

Ques. Had your firm at that date any other security from Isaac Cohen?

Ans. No.

Ques. Then I understand you to say you advanced upon the credit of these notes the sum of $7,000 or more, as appears by the account you have introduced in evidence. Is that so?

1273 Ans. We advanced, as our accounts will show, and took all the security we could get to protect us in the advances made to Isaac Cohen.

Ques. When you speak of taking all the securities you could get do you refer to the seizures made under your judgement?

Ans. I refer to the pledge of the three notes of Isaac Cohen, which was all we could get at the time & since.

Ques. If you took in pledge these securities under the terms you have mentioned there are certainly employees or persons you know who have seen this pledge. Cannot you produce any such party?

Ans. Our firm are not in the habit of allowing clerks to see the pledges we take, though they may do so occasionally, yet not necess-ily; our cashier, I think, at that time was Mr. Robert Green, who is not here & I don't know where he is; he would probably have seen them, but not necessarily, so I know of no other employee who would have seen them.

Ques. Would such pledges have been kept in a book, or in what manner did you keep such pledges?

1274 Ans. Such pledges are not kept in a book; they are kept by themselves and put away when there is no further use for them.

Ques. Was it before or after the sale of these notes that you sent to Arkansas to your counsel, General Reynolds, to make inquiry in regards to liens on the property of W. H. Todd?

Ans. I think it was before & after, but I am not sure.

Ques. At the time you made the sale of these notes under execution had you made inquiry as to the position of Mr. Todd in Arkansas, so far as related to his property there and his solvency?

Ans. We did not sell the notes; the sheriff sold them; we simply

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Ans. I don't know.

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Ques. Have you made search for this document among the papers of T. H. & J. M. Allen & Co.?

Ans. I have.

1272 Ques. When did you make this search?

Ans. Lately, within the past ten days.

Ques. When you took these obligations from Isaac Cohen as collateral security were you not aware of the credit and ability of W. H. Todd to meet these notes at maturity? Had you not done a large business with Mr. Todd for several years previous, & did you not know at that time that he was reputed to be wealthy?

Ans. No.

Ques. What advance did you make to Isaac Cohen on the credit of these obligations?

Ans. I refer to the accounts hereinbefore filed, marked "E & F," & to the judgement we obtained in the courts here.

Ques. Had your firm at that date any other security from Isaac Cohen?

Ans. No.

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Ans. I think it was before & after, but I am not sure.

Ques. At the time you made the sale of these notes under execution had you made inquiry as to the position of Mr. Todd in Arkansas, so far as related to his property there and his solvency?

Ans. We did not sell the notes; the sheriff sold them; we simply

bought them. We made some enquiry, which was very unsatisfactory, as to his condition & as to these notes.

Ques. You took them for your advances, notes which I understand you to say were secured by mortgage as collateral security for such advances, made to the extent of many thousand dollars, &
1275 within a brief period thereafter purchased said collaterals, amounting in the aggregate to $5,000, and a considerable amount of interest, for $200?

Ans. No, sir.

—. What is there in that interrogatory that is inaccurate?

Ques. I do not answer the interrogatory other than as answered.

Ans. Did you not take as collateral security certain notes secured by mortgage for the sum of $5,000 in aggregate & make advances in consideration of said notes?

Ans. Our firm received the notes of Wm. H. Todd as collateral security.

Ques. Did you not cause these notes to be seized & sold, and did you not buy them in for the sum of $200 at sheriff's sale?

Ans. Our attorneys issued a writ of attachment and seized the notes from our hands; took them from us; advertised them at public sale. We were the last & highest bidders at the sale, & bought them in for $200.

Counsel for respondents offers in evidence letter addressed
1276 to T. H. & J. M. Allen & Co. by Benj. H. Smith & dated 4th April, 1874, marked "Z."

Objected to upon the grounds, first, that it is not an authentic instrument & is not proved; second, it is not shown to have been received by plaintiffs, and now emanates from respondent-; third, it does not show any connection with the issues herein presented, and is therefore irrelevant & incompetent.

Ques. Mr. Lallande, please examine this letter (letter presented by respondent, marked "Y") and state whether such letter was written by your house.

Ans. Yes, sir; it was written by our clerk.

Ques. Please examine the Exhibit "Z" & state whether such letter was received by your house, this being a copy of the original.

Ans. I cannot remember.

(Mr. Lallande is requested to examine his papers and, if possible, produce the original.)

Redirect:

Ques. Mr. Lallande, can you produce your accounts current
1277 with Isaac Cohen, say for ten months prior to 25th October, 1875? If so, produce the same.

Ans. I think I can.

Ques. Have you had made the account requested?

Ans. I have.

Ques. Is this correct?

Ans. It is.

Counsel for plaintiff now offers Exhibit "O." Objected to as irrelevant.

Ques. Mr. Lallande, an enquiry was made on cross-examination as to amount received by your house from Buckner & Co. through the sheriff in suit of T. H. & J. M. Allen & Co. *vs.* Israel Cohen, and you stated the amount to be $547.34, less expenses. Through whom did you receive that money and under what account?

Ans. I received it under the account now produced, rendered our firm by our attorneys, Breaux, Fenner & Hall.

Said document now is introduced & filed, marked Exhibit "P."

Ques. Mr. Lallande, was any agreement in writing reported
1278 to you under which said payment was so made?

Ans. Yes.

Witness produces document marked Exhibit "Q," which is now produced & filed.

Ques. Do you know the handwriting of the document "Q" & the signature thereto?

Ans. Yes; the signature of "Clapp Bros & Co., for Bank of Greenville," — in the handwriting of J. J. Gidiere, a member of said firm. The body of the document is in the handwriting of Judge Fenner, a member of the legal firm of Breaux, Fenner & Hall, & with our approval.

Recross-examination:

Ques. Have you yet discovered among your papers any document in writing under which you received the three notes sold under execution *in* and referred to in this examination?

Ans. I have not yet found the instrument of pledge. The notes were sold under writ of execution or attachment, not under pledge, the notes having been seized by sheriff in our hands in
1279 regular process of law.

Ques. At the time of the seizure of said notes in your hands, as you have stated, or any time about that date, did you make any exhibit to your then attorneys, Breaux, Fenner & Hall, of any act of pledge by which you held these notes?

Ans. All papers connected with this transaction were shown to our attorneys & all information we had were given to our attorneys, as is usually the case with us in such transactions, with very few exceptions.

Ques. Did you exhibit to them this document?

Ans. I believe this document with all the others were shown to our attorney, Judge Fenner.

Ques. Have you, since this commission was issued in the present case, seen Judge Fenner or any of the members of the late firm of Breaux, Fenner & Hall to learn whether they had such paper in their possession?

1280 Ans. I have met Judge Fenner on the street within the past ten days and casually mentioned to him that the matter

of Isaac Cohen was being revived. I did not ask anything about this paper, because our attorneys returned to us all the papers connected with this matter.

Ques. I notice that in stating in your examination-in-chief the amount of the claim against Isaac Cohen, after deducting what you had received thereon, you state that there was a certain amount, say $1,700 & odd dollars with 8 % interest. How have you calculated your interest account in this case in making up your statements?

Ans. At arriving at these figures of $1,700 odd dollars I went only a difference between the debit and credit side of the account without calculating interest. Since I have made that answer I have had the account made out allowing 8 % and charging 8 % interest, which leaves a balance due us, Dec'r 11, 1883, $2.982.72, as per Exhibit "E."

1281 Ques. I notice also that the judgement you have obtained in this case on the 25th of April, 1876, was a judgement for $5,587.77, with legal interest—5% interest—under our law. Has there been any other transaction of business between the house of T. H. & J. M. Allen & Co. & Isaac Cohen since that date except what grows out of this judgement?

Ans. We had in this pledge a written agreement to pay us 8% on all accounts due us.

—. How do you account for the discrepancy between your present statement and the judgement rendered in your favor allowing you 5% interest?

Ans. I account for that difference by the usual custom of doing our business with Isaac Cohen for several years previous to this, and his agreement in the pledge to charge 8% to all accounts due us.

Ques. Do I understand you to say that Judge Fenner, who attended to this business for you, holding in his hands the evidence you have suggested, claimed only 5% interest when you

1282 were entitled to claim 8%?

Ans. I do not propose to criticise Judge Fenner as to his legal capacity. I only give my evidence to the best of my knowledge & belief.

Ques. How long is it since you have seen the act of pledge or pawn you have referred to in this case, and where did you see it?

Ans. I do not remember how long since. All such papers were generally handled by me in my office and carefully preserved as long as I thought they were of any value. I considered such papers of no value after certain events had taken place.

Ques. What events do you refer to?

Ans. After the rendition of the judgements & death of Isaac Cohen & other things in connection with this claim.

Ques. Do you remember when Isaac Cohen died?

Ans. I do not.

(Signed) J. B. LALLANDE.

Sworn to and subscribed before me this thirteenth day of December, 1883.

P. LEONARD,
U. S. Commissioner.

1283 *Agreement of Counsel.*

By agreement of counsel, W. S. Benedict, solicitor for claimants, and J. S. & J. T. Whitaker, for respondents, the commissioner will copy from the record No. 8638 of the late sixth district court for the — (*power of attorney*) the following proceedings & documents for complainants:

1st. Petition, affidavit, account annexed, order for attachment, bond of attachment.

2d. Citation issued April 1st, 1876, return thereon if not found same day; second return thereon of 4th April, 1876, served "personally."

3d. Writ of attachment April 1st, citation and interrogatories to Richardson & May, their answers thereto April 12th, 1876; judgement against them May 5th, '76, for $1,277.23.

4th. Default against Israel Cohen, 5th, April 20, '76; judgement against Isaac Cohen signed April 25, '76.

1284 5th. Motion & appointment of H. G. Morgan as *curator ad hoc* to Cohen; service of judgement on Morgan of April 29th.

6th. Writ of *fi. fa.* April 25th, notices of seizure and return annexed; copy of such *fi. fa.* & return thereon.

7th. *Alias fi. fa.* Feb'y 23rd, 1877; garnishment of Buckner & Co. March 2nd, 1877; answer of Buckner & Co. July 16th, 1877; traverse of answers to Buckner & Co. July 12th, 1879—judgement against Buckner & Co.

For respondents:

1876. Petition with account annexed.
" April 12th. Answers of Richardson & May.
" " 25th. Judgement.
" July, 7th. *Fi. fa.* for seizure of notes of W. H. Todd & proceedings thereunder.
1877, Feb'y 23. Supplemental petition and interrogatories to Buckner & Co.
1877, Mar. 2. Answers of Buckner & Co.
" July 16. Traverse of answers to Buckner & Co.
1879, June 12. Judgement on traverse to Buckner & Co.

W. S. BENEDICT,
Att'y for Pl'ff-.
J. S. & J. T. WHITAKER,
For Respondents.

1285 Sixth District Court for Parish of Orleans.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

To the honorable the judge of the sixth district court for the parish of Orleans:

The petition of T. H. & J. M. Allen & Co., a commercial firm of the city of New Orleans, respectfully shows—

That Isaac Cohen, who resided in Chicot county, Arkansas, is indebted unto them in the sum of fifty-five hundred & eighty-seven $\frac{77}{100}$ dollars, with legal interest from this date, as per account hereto annexed and made part of this petition.

That said debt is due, and that said Cohen resides out of the State of Louisiana.

That they believe that Richardson & May, a commercial firm of this city, is indebted unto said Cohen, or has under its control property or credits belonging to him or in which he has an interest.

Wherefore, the annexed affidavit & bond considered, peti-
1286 tioners pray that a writ of attachment issue against the property of said Cohen; that Richardson & May be cited as garnishees and ordered to answer under oath, within the legal delays, the annexed interrogatories; that the said Cohen be cited according to law, and that after due proceedings there be judgement maintaining said attachment, and condemning said Cohen to pay petitioners the said sum of fifty-five hundred & eighty-seven & $\frac{77}{100}$ dollars, with interest & costs, with privilege on the property attached, and for all general relief.

(Signed) BREAUX, FENNER & HALL,
Attorneys.

John B. Lallande, being duly sworn, declares that he is a member of the firm of T. H. & J. M. Allen & Co., and that all the allegations in the foregoing petition contained are true.

(Signed) J. B. LALLANDE.

Sworn and subscribed before me this 31st day of March, 1873.

(Signed) F. WALL, *D'y C.*

1287 Let a writ of attachment issued herein as prayed for and according to law on petitioner furnishing bond, with good and solvent security, in the sum of eight thousand and five hundred dollars, conditioned as the law directs.

New Orleans, Mar. 31st, 1876.

(Signed) A. SAULIER, *Judge.*

Isaac Cohen, Esq., in Ac. with T. H. & J. M. Allen & Co., in Liquidation.

	Interest to 1st April, 1876, @ 8 %.	Principal.	Days.	Interest.
1875.				
Oct. 25	To balance as per % ren'd	7,109 59	759	251 22
1876.				
Apr. 1	" interest to principal	222 97		
		$7,332 56		251 22
	Cr.			
1875.				
Dec'r 11	By d'ft to R. Stripling on J. L. Harris & Co.	250 00	112	6 22
1876.				
Jan'y 18	" am't charged A. L. Stuart, agent	394 79	74	6 50
" 28	" cash of Richardson & May	1,000 00	64	14 22
Feb'y 2	" am't charged R. G. Kerby	100 00	59	1 31
Ap'l 1	" balance of interest	100 00	59	222 97
" "	" balance carried down	5,587 77		
		7,332 56		251 22
1876.				
Apr. 1	To balance bro't down, due us, cash	$5,587 77		

E. & O. E. New Orleans, 1st April, 1876.

T. H. & J. M. ALLEN,
In Liquidation,
Pr. R. IRELAND.

1288 Know all men by these presents that we, T. H. & J. M. Allen & Co., as principals, & D. W. Randolph and S. V. Mitchell, as sureties, of the city of New Orleans and State of Louisiana, are held and firmly bound unto John J. O'Brien, clerk of the sixth district court for the parish of Orleans, and his successors in said office, in the sum of eight thousand five hundred dollars, lawful money of the United States of America; for which payment, well and truly to be made to the said clerk or his successors, we bind ourselves, *in solido*, and each of our executors, administrators, heirs, and assigns, firmly by these presents.

Sealed with our seals and dated 31st March, 1876.

Whereas the said T. H. & J. M. Allen & Co. have this day presented a petition to the sixth district court for the parish of Orleans praying a writ of attachment to issue against the property of Isaac Cohen, now, the condition of the above obligation is

1289 that we, the above-bound principals and sureties, will well and truly pay to the said clerk, or his successors in office, for the benefit of any and all persons interested in said suit, all the damages that may be recovered against us in case it should be decided that the said writ was wrongfully obtained.

Signed, sealed, and delivered in the presence of—

T. H. & J. M. ALLEN & CO., [SEAL.]
In Liquidation.

J. B. LALLANDE. [SEAL.]
D. W. RANDOLPH. [SEAL.]
SAM. V. MITCHELL. [SEAL.]

Citation.

STATE OF LOUISIANA:

Sixth District Court for the Parish of Orleans, in the city of New Orleans.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

Mr. Isaac Cohen:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the 6th
1290 district court for the parish of Orleans within ten days after the service thereof.

Witness the Honorable Arthur Saulier, judge of the said court, this 31st day of March, in the year of our Lord 1876.

(Signed) R. K. HYAMS,
Deputy Clerk.

NEW ORLEANS.

Received copy of petition and citation inside, to be served on Isaac Cohen, April 1st, 1876, and after diligent search and enquiry I was unable to find defendant, Isaac Cohen, and was credibly informed that he resides out of this State of Louisiana permanently.

Returned same day.

(Signed) M. M. S. NORMAN,
D'y Sheriff.

Sheriff's fees, $2.00.

NEW ORLEANS, *April 4th*, 1876.

Served a copy of the within citation & petition on Isaac Cohen, defendant herein, personally.

(Signed) A. WALLACE HUNTER,
D'y Sheriff.

1291 T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. —.

To the honorable the judge of the sixth district court for the parish of Orleans:

The supplemental petition of T. H. & J. M. Allen & Co. respectfully represents—

That they have obtained from the clerk of this honorable court a writ of attachment ordering the sheriff of this parish to seize and take into his possession the property, real and personal, rights & credits of defendant, Isaac Cohen, and to cause to be made in the manner prescribed by law an amount sufficient to pay and satisfy the same, viz., fifty-five hundred and eighty-seven $\frac{77}{100}$ dollars; and having good reason to believe that Richardson & May, third person-, are indebted unto said defendant or *has* property or effects in their

possession or under their control belonging to said defendant,
1292 therefore petitioner- pray that said Richardson & May be made garnishee- herein and ordered to answer under oath the accompanying interrogatories, and, after all due and legal proceedings, condemned to pay the amount of said claim, interest & costs.

(Signed) BREAUX, FENNER & HALL,
Attorneys for Plaintiffs.

Interrogatories to be Answered Categorically under Oath, in Writing, Ten Days after Service.

1st. Had you in your hands or under your control, directly or indirectly, at the time of service of these interrogatories or at any time since, any money, rights, credits, or other property whatever belonging or due to the said defendant in attachment or in which he has or had any interest for the whole or for a part, or, if yea, what is the nature or description and amount thereof, and is
1293 the same sufficient to pay or satisfy the full amount of said claim, or, if less, to what amount?—you being asked and required to make a full disclosure in relation to the same.

2nd Interrogatory. Were you not at the time of service upon you of these interrogatories or since, directly or indirectly, indebted or obligated unto the said defendant in attachment for anything or for any sum whatever, whether for yourself alone or together with others, in consequence of any sale or exchange or transaction of any kind whatever, whether the same be due or to become due, and whether the interests of said defendant in attachment be direct or indirect or be for the whole or for a part only, or whether it be by bill, note, or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said claim and costs; or, if less, what
1294 amount?—you being asked and required to make a detailed disclosure in relation to the same.

3d Interrogatory. Have you at any time since the notice of sezure in your hands herein made, directly or indirectly, unto or with the said defendant in attachment any payment or novation or compromise or arrangement, or given him any note or written obligation, or received from him, directly or indirectly, any receipts or acquittances? And, if yea, state the nature, description, and amount thereof and the time, place, & circumstances of the same.

Filed March 31st, 1876.

(Signed) F. WALL,
Deputy Clerk.

Sixth District Court.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

A. H. May, being sworn, says that he is a member of the firm of

Richardson & May, garnishees, & to the first interrogatory
1295 says: No; except as follows: We have in our hands to the credit of Isaac Cohen twelve hundred and seventy-seven $\frac{23}{100}$ dollars, after deducting twenty dollars for attorneys' fees incurred by us, and we have received fifty-six bales of cotton, of which fifty-one bales have been seized by the sheriff of the parish of Orleans, and for which we have given to the sheriff receipt, as per copy annexed. When the proceeds of sales are ascertained we will report the same.

We have also in our hands a certain draft made by Wm. H. Todd to the order of and indorsed by Isaac Cohen, addressed to Jury & Gillis, acceptance waived, payable ninety days after date, for four hundred and twenty-eight $\frac{5}{100}$ dollars, seized by G. M. Bailey & Pond *vs.* Isaac Cohen prior to the seizure herein, and the proceeds of which are by agreement of parties prior to seizure herein, to be paid over to G. M. Bailey & Pond, or so much thereof as may be sufficient to satisfy their claim.

1296 To the second interrogatory: No, except as stated above in answer to the first direct interrogatory, and said answer is adopted.

To the third interrogatory: No, except as stated in answer to the first interrogatory.

(Signed) A. H. MAY.

Sworn to and subscribed before me this 11th day of April, 1876.

(Signed) WM. H. HOLMES.

Second Justice of the Peace, Parish of Orleans, La.

(Copy.)

Received, New Orleans, April 5th, 1876, of the civil sheriff of the parish of Orleans (51) fifty-one bales cotton marked $\overset{12}{\text{J T}}$ [C], $\overset{1}{\text{A H R}}$ $\overset{10}{\text{S B}}$ [C], $\overset{8}{\text{J N}}$ [C], $\overset{9}{\text{A X D}}$ [C], seized on the steamer Thompson Dean April 5th, 1876, under a writ of attachment in suit No. 8638, 6th district court, parish of Orleans, La., entitled T. H. & J. M. Allen & Co. *vs.* Isaac Cohen, and we agree to hold the net
1297 proceeds of said 51 b's cotton subject to the orders of the said civil sheriff.

(Signed) RICHARDSON & MAY.

Default, April 17th, 1876.
Judgment, April 20th, 1876.

Judgment. Rendered April 20th, 1876.

T. H. & J. M. Allen & Co.
vs.
Isaac Cohen. } No. 8638.

On motion of Breaux, Fenner & Hall, of counsel for plaintiff, on producing to the court due proof in support of their demand, and

the law and evidence being in favor of plaintiffs, it is ordered, adjudged, & decreed that the judgment by default herein, entered on the 17th inst., be now confirmed; that plaintiffs, T. H. & J. M. Allen & Co., do have and recover of defendant, Isaac Cohen, the sum of fifty-five hundred & eighty-seven $\frac{77}{100}$ dollars, with legal interest from judicial demand, and costs of suit, with privilege on the property attached.

Judgment signed April 25th, 1876.

A. SAULIER, *Judge.*

1298 STATE OF LOUISIANA:

Sixth District Court for the Parish of Orleans.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

State of Louisiana to the sheriff of the parish of Orleans, Greeting:

We command you that, by seizure and sale of the property, real and personal, rights & credits of defendants, Isaac Cohen, in the manner prescribed by law, you cause to be made the sum of fifty-five hundred and eighty seven $\frac{77}{100}$ dollars, with legal interest from judicial demand, to wit, March 31st, 1876, with privilege on the property attached, and also the sum of twenty $\frac{95}{100}$ dollars costs, as well as your own costs & charges, to satisfy a judgment rendered against the defendant, Isaac Cohen, in our sixth district court for the parish of Orleans, 20th day of April, 1876, in favor of plaintiff, & how you shall have executed this writ you make known to our court

1299 (within seventy days) according to law.

Witness the Honorable Arthur Saulier, judge of the said court, this 25th day of April, in the year of our Lord 1876.

(Signed) R. K. HYAMS,
Deputy Clerk.

6th District Court.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. —.

On motion of Breaux, Fenner & Hall, of counsel for plaintiff, & on suggesting that, as appears by the records & sheriff's returns herein, the defendant is a resident of the State of Mississippi, where he now is, and that it is necessary that a *curator ad hoc* should be appointed, upon whom copy of judgement & other notices, if necessary, may be served—

It is ordered that G. H. Morgan, Esq., be appointed *curator ad hoc* for defendant, Isaac Cohen.

Filed April 29th, 1876.

(Signed) R. K. HYAMS, *D'y C.*

1300 STATE OF LOUISIANA:

Sixth District Court for the Parish of Orleans.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

To H. G. Morgan, Esq., attorney-at-law:

You are hereby notified you have been appointed *curator ad hoc* to represent absent defendant in above-entitled case.

Clerk's office, New Orleans, April 26th, 1876.

(Signed) R. K. HYAMS,
Dep. Clerk.

Served on H. G. Morgan, Esq., attorney-at-law. Received April 29th, 1876, and on the 2nd day of May, 1876, I served a copy of the within notice of appointment on G. H. Morgan, att'y-at-law, in person. Returned same day.

(Signed) S. E. CROYAT,
D'y Sheriff.

Filed May 4th, '76.

R. K. HYAMS,
D'y Clerk.

STATE OF LOUSIANA:

Sixth District Court for the Parish of Orleans.

1301 FRIDAY, *the 5th day of May*, 1876.

Present: The Honorable Arthur Saulier, judge.

T. H. & J. M. ALLEN
vs.
ISAAC COHEN. } No. 8638.

The above rule this day taken up, T. L. Bayne, attorney for garnishee, being present, when, the law and evidence being in favor of plaintiff-, in rule, it is ordered by the court that said rule be made absolute, and that Richardson & May, garnishees herein, pay over to the sheriff on the execution herein issued the sum of twelve hundred & seventy-seven $\frac{22}{100}$ dollars cash and the proceeds of the cotton described in their answer on file.

Extract from the minutes.

(Signed) R. K. HYAMS, *D'y Clerk.*

On the 10th May, 1876, served a copy of the within notice of seizure on H. Gibbs Morgan, *curator ad hoc*, appointed by the
1302 court to represent the defendant herein personally.

(Signed) ROB. SWAIN,
Dep'y Sheriff.

Received April 25th, 1876, and levied this writ on the property described in the within annexed notice of seizure and printed ex-

tract herein; notified defendant of seizure in a manner more fully explained by reference to my return on the reverse of the within annexed notice of seizure, which, with the return thereon, *are* made part of this return; and, no payment being made and after legal delay had expired, the said property was advertised for sale on the 16th day of May, 1876, in the following manner, to wit:

By advertisement, composed in English, announcing the sale to take place at the Merchants' and Auctioneers' Exchange, on Royal street between Canal & Custom-House streets, in the second
1303 district of this city, on the 27th day of May, 1876, at 12 o'clock m. Said advertisements were inserted and published in English in one paper in the city of New Orleans, to wit, in the New Orleans Republican, on the 16th, 20th, 24th, & 27th days of May, 1876, when, on the 27th day of May, 1876, previous to the hour of sale, further proceedings under this writ were stayed by written order of plaintiffs' attorneys.

When, the day within which this writ is made returnable having expired before said sale could be made, I make this my return, still maintaining my seizure upon said property.

And, at the time of the returning of this writ, I requested the clerk of this honorable court to furnish me with a copy thereof, together with all the proceedings thereon, in conformity to law.

No other property, after due demand made of both parties herein.

Sheriff's fees for this writ, $2.00.

Costs & charges still due & owing.

1304 Returned July 3rd, 1876.

(Signed) J. DUPUEY,
D'y Sheriff.

Subsequently the said property was again advertised for sale on the ninth day of January, 1877, in the following manner, to wit, by advertisement, composed in English, announcing the sale to take place at the Merchants' & Auctioneers' Exchange, Royal St. between Canal & Custom-House streets, in the second district of this city, on the 20th day of January, 1877, at 12 o'clock m. The said advertisements were inserted and published in English in one paper in the city of New Orleans, to wit, in the New Orleans Republican, from the said 9th day of January, 1877, to the day of sale, being fully ten days from the date of the first notice given in said newspaper. Said advertisements were inserted and published in said newspaper on
1305 the 9th, 13th, and 20th day of January, 1877; and, after having further complied with and performed all the additional previous legal requisites and after the said property having been duly appraised, did expose the same at public sale, according to law, at the said Merchants' and Auctioneers' Exchange, Royal street between Canal and Custom-House streets, in the second district of this city, on the said 20th day of January, eighteen hundred and seventy-seven, at 12 o'clock m., having first announced in a loud and audible voice the terms and conditions hereinafter expressed and specified.

When, Charles E. Fenner being the highest and last bidder for

account of T. H. & J. M. Allen & Co., the said property was
1306 adjudicated to the said T. H. & J. M. Allen & Co. for the price and sum of two hundred dollars, payable cash, and which amount of sale the purchaser retained in their hands on account of their judgement, they being the plaintiffs in the case. Costs and charges, detailed on the reverse hereof, still due & owing.

Finally returned January 25th, 1877.

(Signed) MICHEL DE ARMAS,
D'y Sheriff.

In the Sixth District Court for the Parish of Orleans.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN } No. 8638.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, 8 *May*, 1876.

To Isaac Cohen, through H. Gibbs Morgan, *curator ad hoc.*

Take notice that I have seized and in three days from the service hereof shall proceed to advertise and sell, according to law, the following property, to wit, three notes, in words and figures as follows, to wit:

1307 $1,666.66. LUNA, ARKANSAS, *January* 23, 1885.

One year after date I promise to pay to the order of Isaac Cohen sixteen hundred and sixty-six and $\frac{66}{100}$ ($1,666.66) dollars, with interest at ten per cent. per annum from date until paid.

(Signed) WM. H. TODD.

Endorsed: I. Cohen.

$1,666.66. LUNA, ARKANSAS, *January* 23, 1875.

One year after date I promise to pay to the order of Isaac Cohen sixteen hundred & sixty-six and $\frac{66}{100}$ ($1,666.66) dollars, with interest at ten per cent. per annum from date until paid.

(Signed) WM. H. TODD.

Endorsed: I. Cohen.

$1,666.66. LUNA, ARKANSAS, *January* 23, 1875.

One year after date I promise to pay to the order of Isaac Cohen sixteen hundred & sixty-six and $\frac{66}{100}$ ($1,666.66) dollars, with interest at ten per cent. per annum from date until paid.

(Signed) WM. H. TODD.

Endorsed: I. Cohen.

To pay & satisfy the writ issued in this case, say the sum of
1308 $5,587.77, less a credit of $3,248.72, with interest and costs, unless the same is immediately paid.

(Signed) J. POLLOCK,
D'y Sheriff.

On the 10th May, 1876, served a copy of the within notice of seizure on H. Gibbs Morgan, *curator ad hoc*, appointed by the court to represent the defendant herein personally.

(Signed) ROB. SWAIN,
D'y Sheriff.

STATE OF LOUISIANA:

Sixth District Court for the Parish of Orleans.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

State of Louisiana to the sheriff of the parish of Orleans, Greeting:

We command you that, by seizure and sale of the property, real and personal, rights, and credits of defendant, Isaac Cohen, in the manner prescribed by law, you cause to be made the sum of fifty-five hundred and eighty-seven $\frac{77}{100}$ dollars, with legal interest from judicial demand, to wit, March 31st, 1876, with privilege on
1309 the property attached (subject to a credit of two hundred dollars), and also the sum of thirty-four .75 dollars costs, as well as your own costs and charges, to satisfy a judgement rendered against the said defendant, Isaac Cohen, in our six- district court for the parish of Orleans, 20th day of April, 1876, in favor of plaintiff-, and how you shall execute this writ you make return to our said court (within seventy days), according to law.

Witness the Honorable N. H. Righter, judge of the said court, this 23d day of February, in the year of our Lord 1877.

(Signed) H. J. DRESSON, *D'y Clerk.*

STATE OF LOUISIANA:

In the 6th District Court for the Parish of Orleans.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *Feb'y 23d*, 1877.

To Buckner & Co.:

1310 Please to take notice that, by virtue of a writ of *fieri facias* issued in the above-mentioned suit, I seized in your hands all the goods, chattels, lands, tenements, rights, and credits, money effects, bills of exchange, promissory notes, or property of any kind which you may now or hereafter have in your possession or under your control belonging to the defendant, Isaac Cohen, and more particularly the proceeds of, or thirty-two bales of, cotton, marked as follows: Rec'd Jan'y 27th, per Grand Republic; Feb'y 5th, per Carondelet; Feb'y 10th, per Grand Republic; Feb'y 19th, pr. Carondelet, marked [J] P [J] M S [J] J & M [J] J C [J] J C & W [J] D &

W C B [J] J D Y [J] remnant [J] M C [J] P G [J] W L [C] H N [C] K T, which you will hand over to me.

(Signed) J. R. DULIES,
D'y Sheriff.

Cotton Received by Buckner & Co., pr. Account John Bergman, Shipped by J. L. Johnson from Luna Landing.

1311 Rec'd Jan'y 27, pr. Grand Republic, 2 b. c., [J] P.
Rec'd Feb'y 5th, pr. Carondelet, 3 b. c., [J] M S.
Rec'd Feb'y 5th, pr. Carondelet, 3 b. c., [J] J & M.
" " " 3 " " J C.
" " " 1 " " J C & W.
" " " 3 " " D & W.
" " " 4 " " C B.
" " " 1 " [J] J D Y.
" " " 1 " " remnant.
" 10, pr. Grand Republic, 3 b. c., [J] M C.
" " 4 " " P G.
" 19, Carondelet, 2 " " W L.
" " " 1 " [C] H N.
" " " 1 " " K T.

On the 23d day of February, 1877, at the hour of 3½ p. m., served a copy of the within notice on James Buckner, one of the firm of Buckner & Co., garnishees herein.

(Signed) ROB. SWAIN,
D'y Sheriff.

On the 23rd February, 1877, made a general seizure in the hands of Buckner & Co., garnishees herein, as shown by the notice of seizure hereto attached, which, with the return thereon, *are*
1312 hereof made part from said general seizure. Nothing came into the possession of the sheriff or under his control; but, as the said general seizure is maintained by order of plaintiffs' attorney, I herewith return this writ, requesting the clerk of this honorable court to furnish the sheriff with a copy of this writ, together with all my proceedings hereon, in accordance with law. No money or property found, except what may be in the hands of garnishees after due demand made of defendant, through H. G. Morgan, *curator ad hoc*, appointed by the court to represent defendant, & of plaintiffs' attorney.

Returned May 3rd, 1877.

(Signed) ROB'T SWAIN,
D'y Sheriff.

T. H. & J. M. ALLEN & Co., in Liquidation,
vs.
ISAAC COHEN. } No. 8638.

To the honorable the judge of the sixth district court for the parish of Orleans:

The supplemental petition of J. H. & J. M. Allen & Co., in
1313 liquidation, respectfully represents—

That they have obtained from the clerk of this honorable court a writ of *fieri facias* (*alias*) ordering the sheriff of this parish to seize and to take into his possession the property, real and personal, rights, and credits of defendant, Isaac Cohen, and to cause to be made, in the manner prescribed by law, an amount sufficient to pay and satisfy the same, viz., — dollars, and having good reason to believe Buckner & Co., a commercial firm of this city, third persons, are indebted unto said defendant, or have property or effects in their possession or under their control belonging to said defendant, or in which he has an interest—

Therefore petitioners pray that said Buckner & Co. be made garnishees herein and ordered to answer under oath the accompanying interrogatories, and, after all due and legal proceedings,
1314 condemned to pay the amount of said judgement, interest, & costs.

(Signed) BREAUX, FENNER & HALL,
Attorneys for Petitioner.

Interrogatories to be Answered Categorically under Oath, in Writing, Ten Days from Service.

1st. Had you in your hands or under your control, directly or indirectly, at the time of service of these interrogatories, or at any time since, any money, rights, credits, or other property whatsoever belonging or due to the said defendant in execution, or in which he has or had any interest, for the whole or for a part; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said judgment, or, if less, to what amount?—you being asked and required to make a
1315 full disclosure in relation to the same.

2d Interrogatory. Were you not at the time of service upon you of these interrogatories or since directly or indirectly indebted or obligated unto the said defendant in execution for anything or for any sum whatever, whether for yourself alone or together with others, in consequence of any sale or exchange or transaction of any kind whatever, whether the same be due or to become due and whether the interests of said defendant in execution be direct or indirect or be for the whole or a part only, or whether it be by will, note, or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said judgement and costs, or, if less, what amount?—you being asked and required to make a full and detailed dis-
1316 closure in relation to the same.

3d Interrogatory. Have you at any time since the service

of notice of seizure in your hands herein made, directly or indirectly, unto or with the said defendant in execution any payment or novation or compromise or arrangement, or given him any note or written obligation or received from him, directly or indirectly, any receipts or acquittance? And, if yea, state the nature, description, and amount thereof and the time, place, and circumstances of the same.

4th Interrogatory. Have you not in your possession or under your control thirty-two bales of cotton consigned to you by L. Johnson, for account of John Berkman, & more fully described as follows, to wit:

Jan'y 27th, pr. Grand Republic, 2 b. c., m'k'd [J] P.
Feb'y 5, per Carondelet, 3 b. c., m'k'd [J] M. S.
" " 3 " " " J & M.
" " 3 " " " J. C.
Feb'y 5, per Carondelet, 1 b. c., m'k'd [J] J C & W.
1317 Feb'y 5th, pr. Carondelet, 3 b. c., m'k'd [J] D H N.
" " 4 " " C B.
Feb'y 5th, pr. Carondelet, 1 b. c., m'k'd [J] J D Y.
" " 1 " " " Remnant.
" 10, " Grand Republic, 3 b. c., m'k'd [J] M C.
" " " " 4 " " " P G.
" 19, " Carondelet, 2 " " " W L.
" " " " 1 " " [C] H N.
" " " " 1 " " " K T.

And are not the same the property of the defendant, Isaac Cohen, or has he not an interest in the same?

Filed Feb'y 23rd, 1877.

J. V. GUELLOTTE, *Clerk.*

T. H. & J. M. ALLEN & Co., In Liquidation,
vs.
ISAAC COHEN; BUCKNER & Co., Garnishees. } No. 8638.

To the Hon. N. H. Righter, judge of the sixth district court, parish of Orleans.

Now into court comes Buckner & Co., cited as garnishees in the above-entitled suit, and by Newton Buckner, a partner in said firm, make answer under oath to the interrogatories served upon them therein, as follows, to wit:

1318 They answer to the 1st interrogatory: No; we have not in our possession or under our control, directly or indirectly, at the time of the service of those interrogatories or since, any money, rights, or credits or other property whatsoever belonging or due to the defendants in execution, or in which he has or had any interest, to the best of our knowledge.

To the 2nd interrogatory: No, as above stated.

To the 3rd interrogatory: No.

To the 4th interrogatory: Yes; we have in our possession and under our control thirty-two bales of cotton consigned to us by L. Johnson, for account of John Bergman, as described by marks and

numbers in the above interrogatory, but the same is not the property of the defendant, Isaac Cohen, nor has he any interest therein, to the best of our knowledge.

(Signed) N. BUCKNER.

Sworn & subscribed before me this 2nd day of March, 1877.

(Signed) JOHN McCORMACK,
Second Justice Peace.

1319 Filed March 2nd, 1877.

(Signed) H. J. DRESSON, *D'y Clerk.*

Sixth District Court for the Parish of Orleans.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

On motion of Breaux, Fenner & Hall, of counsel for plaintiffs herein, and on suggesting to the court that the answers filed herein on March 2nd, 1877, by Buckner Co., garnishees, were not true, because—

1st. The said Buckner & Co. did have in their hands and under their control, at the date of the service of the interrogatories, property belonging to the defendant, Isaac Cohen. viz, the thirty-two bales of cotton referred to in their answer in the fourth interrogatory.

2nd. The thirty-two bales referred to in their answer to the fourth interrogatory did and do belong to Isaac Cohen, defendant, & he has an interest therein—

It is ordered that Buckner & Co. show cause, on a day to
1320 be hereafter fixed by the court, why the interrogatories propounded to them as garnishees should not be taken as confessed, and why they should not be condemned to pay the amount of the judgement, interest, and costs herein to the extent of the proceeds or value of said thirty-two bales of cotton.

Filed July 16th, 1877.

(Signed) H. NUESTED, *D'y Clerk.*

Judgement on Rule vs. *Buckner & Co., Garnishees.*

Sixth District Court for the Parish of Orleans.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN; BUCKNER & Co., Garnishees. } No. 8638.

In the matter of the rule herein taken on the 16th day of July, 1877, traversing the answers of Buckner & Co., herein made garnishees, and submitted to the court for adjudication on the 6th day of June, 1879, for the reasons orally assigned by the court, the law & evidence being in favor of plaintiffs in rule—

1321 It is ordered that said rule be made absolute, and accordingly that the interrogatories herein propounded to defendants

in rule, H. S. Buckner & Co., garnishees, be condemned to pay to plaintiffs, T. H. & J. M. Allen & Co., the amount of the judgement, interest & costs, herein rendered against *to plaintiffs, T. H. & J. M. Allen & Co., the amount of the judgement, interest & costs, herein rendered against* the defendant, Isaac Cohen, to the extent of the proceeds on value of the thirty-two bales of cotton referred to in their answer to the fourth interrogatory, of date March 2nd, 1877, and costs of this rule.

Judgement rendered June 12th, 1879; judgement signed June 24th, 1879.

(Signed) N. H. RIGHTER, *Judge.*

1322 EXHIBIT A.

THE STATE OF LOUISIANA:

Sixth District Court for the Parish of Orleans.

I hereby certify that on the 20th day of April, 1876, judgement was rendered in this court in the following-entitled suit, in the words and figures following, to wit:

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

On motion of Breaux, Fenner & Hall, of counsel for plaintiffs, on producing to the court due proof in support of their demand, and the law and evidence being in favor of plaintiffs—

It is ordered, adjudged, and decreed that the judgement by default herein entered on the 17th inst. be now confirmed; that plaintiffs, T. H. & J. M. Allen & Co., do have and recover of defendant, Isaac Cohen, the sum of fifty-five hundred & eighty-seven $\frac{77}{100}$ dollars, with legal interest from judicial demand, and cost of suit, with
1323 privilege on the property attached.

Judgment signed April 25th, 1876.

[SEAL.] A. SAUCIER, *Judge.*

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 25th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

FRANK WALL,
Deputy Clerk.

EXHIBIT B.

(Copy.)

Messrs. Todd & Smith, in Ac. with T. H. & J. M. Allen & Co.

1868.		Dr.	Cr.
Oct. 30.	To freight & charges on goods forwarded	$28 45	
Nov. 7.	Cash paid for $100.00 int'l rev. stamps, @ 3 % dis.	97 00	
	Cash handed them—5th, $200.00, & 7th, $1,847.79	2,047 79	
1868.	Cr.		
Oct. 31.	By nett proceeds of 20 b. cotton		$2,173 24
		$2,173 24	$2,173 24

E. & O. E. New Orleans, 7th November, 1878.
(Signed) T. H. & J. M. ALLEN & CO.,
Pr. R. IRELAND.

1324 EXHIBIT C.

Copy.

Todd & Smith in Ac. with T. H. & J. M. Allen & Co.

	Interest to 22nd February, 1869, @ 8 %.	Principal.	Days.	Interest.
1868.				
Nov. 12	To cash paid up- fr't pr. Mississippi	9 50	102	23
16	" am't % rend'd pr. T. H. A. & Co.	3,252 59	98	70 80
Dec'r 1	" invoice flour pr. Magenta	35 27	83	65
16	" do. whiskey do.	14 56	68	23
30	" do. bagging, &c., do.	74 80	54	90
1869.				
Jan'y 26	" cash p'd d'ft, 10 ds., f. T. G. Longley	125 00	27	75
Feb'y 2	" remitted pr. N. Longworth 171 76			
"	" river insurance on same @ ⅜ % 64	289 30	20	1 28
"	" invoice seed, &c., per do. 116 74			
"	" am't % rend. pr. T. H. A. & Co., cash & inst.	5,227 30	21	24 39
3	" am't d'ft paid pr. do.	500 00	19	2 11
22	" interest to debit, $31.26; comm's advg., $251.94, @ 2½ %, 6.30	37 56		
		$9,565 88		$101 38

Exhibit C—Continued.

	Interest to 22nd February, 1869, @ 8 %.	Principal.	Days.	Interest.
	Cr.			
1868.				
Dec'r 4	By nett p'c'ds of 10 b. cotton	$1,053 40	79	18 49
10	" do. " 2 do.	222 62	73	3 62
1869.				
Jan'y 6	" do. " 40 do.	4,061 15	47	42 42
7	" do. " 449 sacks cotton seed	190 82	46	1 95
22	" do. " 200 do. do.	74 85	31	52
Feb'y 2	" do. " 490 do. do.	171 96	20	76
19	" do. " 30 b. cotton	3,539 14	3	2 36
22	" balance of interest			31 26
"	" balance carried down	251 94		
		$9,565 88		101 38
Feb'y 22	To balance bro't down due us, cash	$251 94		

1325 E. & O. E. New Orleans, 22nd February, 1869.
(Signed) T. H. & J. M. ALLEN & CO.,
Pr. R. IRELAND.

Exhibit D.

[STAMP.] New Orleans, *7th November*, 1878.

Received from T. H. & J. M. Allen & Co. eighteen hundred forty-seven $\frac{77}{100}$, $1,847.79.

(Signed) TODD & SMITH.

Exhibit E.

Isaac Cohen, Esq., In Acc't with T. H. & J. M. Allen & Co., in Liq.

	Interest @ 8 % to Dec'r 11, 1883.	Principal.	Time.	Interest.
1876.	Debit.			
April 1	To balance due as pr. % rend., cash	$5,587 77	7 y'rs, 254 d'ys	3,444 69
5	To cash paid him	25 00	7 y'rs, 250 d'ys.	15 39
8	" " pr. Thos. H. Allen & Co.	50 00	7 y'rs, 247 d'ys.	30 74
Aug. 24	" paid E. Waggaman, sh'ff, costs in suit *vs.* self	24 50	7 y'rs, 109 d'ys.	14 02
1877.				
Jan'y 7	" paid E. Waggaman, sh'ff, costs in suit *vs.* self	28 50	6 y'rs, 338 d'ys.	15 54
Sept. 18	" paid E. Waggaman, sh'ff, costs in suit *vs.* self	4 00	6 y'rs, 84 d'ys	1 99
1878.				
May 31	" paid 6th dist. court, costs in above suit	11 00	5 y'rs, 194 d'ys.	4 87
1883.				
Dec'r 11	To interest, balance our favor to date	1,248 01		
		$6,978 78		$3,527 24

Exhibit E—Continued.

	Interest @ 8 % to Dec'r 11, 1883.	Principal.	Time.	Interest.
1326				
1876.	CREDIT.			
May 10	By cash, record of Richardson & May, thro' E. C. Fenner, att'y	$3,248 72	7 y'rs, 215 d'ys.	1,974 67
1877.				
Jan'y 20	Amount of our purchase at sh'ff's sale of 3 (three) notes executed by W. H. Todd, of Luna Landing, Ark., viz: 1st, for $1,666.66, due Jan'y 23, '76; 2d, for $1,666.66, due Jan'y 23, '77; 3d, for $1,666.66, due Jan'y 2°, '78, bought for the sum of	200 00	6 y'rs, 325 d'ys.	110 44
1879.				
July 7	Cash received thro' Breaux, Fenner & Hall in the garnishment *vs.* Buckner & Co.	547 34	4 y'rs, 157 d'ys.	194 12
1883.				
Dec'r 11	Balance interest our favor to date			1,248 01
"	Balance carried down, due us this day	2.982 72		
		$6,978 75		$3,527 24
1883.	DEBIT.			
Dec'r 11	To balance bro't down, due us cash this day	$2,982 72		

E. & O. E. New Orleans, Dec'r 11, '83.

T. H. & J. M. ALLEN & CO., *In Liq.*,
Pr. EUG. SMITH.

1327 EXHIBIT F.

Isaac Cohen, Esq., in Ac. with T. H. & J. M. Allen & Co., in Liquidation.

	Interest to first April, 1876, @ 8 %.	Principal.	Days.	Interest.
1875.				
Oct. 25	To balance, as per ac. rend., cash	7,109 59	159	251 22
1876.				
Ap'l 1	" interest to principal	222 97		
		7,332 56		251 22
	CR.			
1875.				
Dec'r 11	By d'ft of W. R. Shipling on J. L. Harris & Co.	250 00	112	6 22
1876.				
Jan'y 18	" am't ch'g'd A. L. Sheart, ag't	394 79	74	6 50
28	" cash of Richardson & May	1,000 00	64	14 22
Feb'y 2	" am't ch'g'd R. G. Kerby	100 00	59	1 31
Ap'l 1	" balance of interest			222 97
"	" balance carried down	5,587 77		
		$7,332 56		251 25
1876.				
Ap'l 1	To balance bro't down, due us, cash	5,587 77		

E. & O. E. New Orleans, 1st April, 1876.

(Signed) T. H. & J. M. ALLEN & CO.,
In Liquidation,
Pr. R. IRELAND.

1328 EXHIBIT G.

Copy.

W. H. Todd, Esq., in Ac. with T. H. & J. M. Allen & Co.

	Interest to 21st April, 1870, @ 8 %.	Principal.	Days.	Interest.
1869.			*Yr. Days.*	
Feb'y 22	To balance, as per ac. rend'd, cash	$251 94	1 58	23 48
April 8	" cost 9 sacks short del'v'd, @ 17½ c.	1 57	1 13	17
June 19	" cash paid reclamation on T. S. 2 b. cotton	42 66	306	2 92
1870.				
April 21	" interest to debit	20 16		
		$316 33		$26 50
	CR.			
1869.				
June 18	By net p'c'ds of 1 b. cotton	$92 56	307	6 34
1870.				
Ap'l 21	" balance of interest			20 16
"	" balance carried down	223 77		
		$316 33		$26 50
1870.				
Ap'l 21	To balance bro't down, due us, cash	$223 77		

E. & O. E. New Orleans, 21 April, 1870.

(Signed) T. H. & J. M. ALLEN & CO.,
Pr. R. IRELAND.

EXHIBIT H.

W. H. Todd, Esq., in Ac. with T. H. & J. M. Allen & Co.

1871. DEBIT.

Oct. 26. To am't credited Thos. H. Allen & Co. $430 10

1871. CREDIT.

Oct. 26. By nett p'c'ds of 6 b. cotton 430 10

$430 10 $430 10

1329 EXHIBIT I.

Copy.

W. H. Todd, Esq., in Ac. with T. H. & J. M. Allen & Co.

1872.		Dr.	Cr.
July 31.	To balance as per ac. rend, cash	304 72	
Aug. 16.	" 16 days' interest, @ 8 %	1 08	
26.	" amount credited Thos. H. Allen & Co.	3 14	
1873.	CREDIT.		
Aug. 16.	By nett proceeds of 6 bales cotton	308 94	308 94

E. & O. E. New Orleans, 26th August, 1873.

(Signed) T. H. & J. M. ALLEN & CO.,
Per R. IRELAND.

Exhibit J..

Copy.

William H. Todd in Ac. with T. H. & J. M. Allen & Co.

		Interest to July 31st, 1873, @ 8 %.	Principal.	Days.	Interest.
1873.					
Feb'y	11	To cash paid d'ft for A. De Valcomb	$25 00	170	94
	13	" " " do " Belle Lee	50 00	168	1 87
	14	" " " do " A. De Valcomb	109 00	167	4 05
	18	" am't — Tho's H. Allen & Co., ac. for supplies	626 66	163	22 71
	21	" cash paid for feed, C. W. Adams	300 00	160	10 67
M'ch	3	" " " " " J. McMurray & Co.	300 00	150	10 00
	7	To cash paid for feed, C. Pleasant	56 00	146	1 82
	15	" " " " " Libingale, $1.50; invoice pr. Lee, $46.29	196 29	138	6 01
	25	To cash paid for feed, J. Clower	110 83	128	3 16
	27	" " " up- fr't, Belle Lee	22 97	126	64
July	31	" interest to principal	28 56		
			$1,825 31		$61 87
1330		Cr.			
1873.					
Feb'y	14	By nett p'c'ds of 11 b. cotton, Todd & Smith $772 24 Less d'ft of W. H. Todd, p'd 20 Jan'y, '73 $575 00 25 days interest on same 3 19 578 19	194 05	167	7 20
M'ch	13	Net p'c'ds of 8 b. cotton	532 90	140	16 58
	22	do " 3 do	127 65	131	3 73
June	20	do " 3 do	175 78	41	1 60
	21	do " 7 do	392 46	40	3 48
	28	do " 2 do	97 75	33	72
July	31	Balance of interest			28 56
	"	Balance carried down	304 72		
			$1,825 31		$61 87
1873.					
July	31	To balance bro't down due us, cash	304 72		

E. & O. E. New Orleans, 31st July, 1873.

(Signed) T. H. & J. M. ALLEN & CO.,
Pr. R. IRELAND.

Exhibit K.

Wm. H. Todd, Esq., in Ac. with T. H. & J. M. Allen & Co.

1873. Debit.

Oct. 23. To cash paid his accept. C. H. Carlton, for self $500 00

1873. Credit.

Oct. 21. By cash of him 500 00

$500 00 $500 00

1331 L.

Wm. H. Todd in Ac. with T. H. & J. M. Allen & Co.

DEBIT.

1873.
Dec'r 29. To cash p'd d'ft @ 60 dd. for E. Canal & protest ---------- $326 23

CREDIT.

1873.
Dec'r 29. By amount transf'd to T. H. Allen & Co. ---------- $326 23

326 23 326 23

EXHIBIT N.

YELLOW BAYOU, *Feb'y 22nd*, 1873.

DEAR SIR: I ship 18 bales of cotton to your house, the proceeds of which please turn over to account of Col. Charles H. Carlton. I have ship-ed with this 18 b. 26 bales only of my Yellow Bayou crop and 11 of the Belvue crop. Of the Yellow Bayou crop, picked & in penns & a small portion still to be picked, I will have still 90 or 95 bales more of my own crop, and all will — ship-ed to your house, except 20 bales to Brannen & Summers for an old account of theirs.

1332 I am not certain whether Captain Smith, my son-in-law & partner on Belvue, has made definite arrangements to ship to Buckner & Co. — C. F. Johnson & Co. the residue of our crop or not.

For the 8 bales I have drawn 300 to Gen'l Reynolds & for Jas. McMurray 300. I am ordering supplies and owe your Memphis firm. Please indulge me awhile, as I have to pay money under an order of court involving a contempt. I shall feel grateful to pay you the last cent out of the crop of '72 unless you agree to let some remain over or unless the flood stops our engine. Please drop me a line (over) on this subject that I may act just as you request, for you neither sought or refused my custom. I will add that my force for '73 is in advance of '72 8 or 10 good *good* hands & Belvue 12 or 15. I think both places have corn enough or nearly so. I shall need 4 to 6 mules and some 10 or more plows, & I may need assistance for the mules, & if the water submerges my engine I may ask

1333 your indulgence and help some further until I can gin. I will at all times tell your house in N. O. or in Memphis truly what I want & my ability to pay. I draw no time drafts nor sight ones, unless cotton is on hands, unless you authorize me so to do, unless it were a very small sum for a boat supply. I have nothing further —, & would be glad to hear from you.

Yours respectfully,
(Signed) WM. H. TODD.

P. S.—Rec'd, per Belle Lee, yours acknowledging the receipt of 8 bales cotton 15th inst.

EXHIBIT M.

PHILADELPHIA, *July 27th*, 1873.

GENTLEMEN: Rec'd your letters covering two sales cotton, 12 bales cotton, amounting in the aggregate to $668. I had an interview with T. H. Allen at Memphis as I came home in May and have since received a letter, in which he states that my account for sup-
1334 plies may go over for the coming crop.

This is to have you make up my account, and, if there is, from shipments made or to be made, anything due me, allowing my account to go over, permit me, or Capt. Smith for me, to draw for the amount in arranging my affairs, as well — liabilities and repairs to the frame gin on Yellow Bayou, which I have contracted to have done by Joshua Simmons, now on the place, to put in complete running order for ginning and grinding, all of which is necessary to make each place independent the one of the other. The brick gin having been lately purchased or compromised with Walworth heirs, we have to send the engine to St. Louis to have it repaired and then put a new foundation to it when it returns; then both places will be completely furnished with gins, the one of horse power & the other steam, to each a mill of the first order attached,
1335 and when these improvements are done and a levy across Belvue, an open field of one mile, commencing at the terminus of the present publick levy, at the line between Pastoria & Belvue, I know nothing more to make both places water-proof, which will invite and offer inducements to freedmen to come and live on each place. Mr. A. L. Gains can tell you all about facts above.

I feel that I am able to stem the tide of persecution. Old T. T. Wright and others have tried to set in against me. It is a country by no means calculated to invite men who wish to honestly invest capital there, but the country is yet good, and I know the land will grow cotton and the river still runs to bear its valuable products to market. Smoke goes up and rain falls and God blesses the industrious.

Yours truly,
(Signed) WM. H. TODD.

Direct, 18 St. & Montgomery ave.

1336

EXHIBIT O.

Copy.

Isaac Cohen, Esq., in Ac. with T. H. & J. M. Allen & Co.

	Interest to 24th March, 1875.	Principal.	Days.	Interest.
	DR.			
1875.				
Jan'y 26	To balance as pr. % rend., cash	3,053 43	57	38 67
27	" cash p'd s. d. Lockwood & Co., $216.50; Marks & Co., $650.36 866 86			
	" cash p'd s. d. L. Stix & Co. 731 36			
	" " " Halliday Bros. 570 91			
	" " " Gilleman & Co. 29 00			
	" " " T. E. Haskell 85 55			
	" " " H. & A. Straub 147 00			
	" " " Lowman & Co. 223 66			
	" " " Poppenheimer & Co. 336 53			
	" " " J. & S. B. Sacks 1,146 75			
	" " " L. Rosin 383 80			
		4,519 72	56	56 25
28	" " " " Schloss & S. 90 00			
	" " " " H. Hirschman 625 25			
		715 21	55	8 74
29	" " " " Belle Lee	375 00	54	4 50
30	" " " " Bodeman & Co.	93 50	53	1 11
Feb'y 5	" " " " str. J. M. Kyle	52 55	47	55
6	" " " " D. McKin & Co.	71 35	46	73
8	" " " " Lowman Bros., 50.00; W. H. Todd, 1,500	1,550 00	44	15 16
10	" cash p'd s. d. J. M. Parsley	70 00	42	65
11	" " " " Belle Lee, 300.00, 44.65; invoice pr. do., $73.10	417 75	41	3 81
12	" cash p'd s. d. McMackus & Bros.	70 00	40	62
15	" " " " Col. Dickenson	340 00	37	2 80
18	" invoice pr. Pargund	133 61	34	1 01
19	" " " " "	96 26	33	70
1337 23	" cash paid s. d. for J. Close	219 00	29	1 41
25	" " " Belle Lee	275 00	27	1 65
27	" " " Halliday & Bros.	700 00	25	3 89
March 8	" " d'ft of W. H. Todd, 30 dd., fav. E. L. Wright	1,500 00	16	5 34
10	" " s. d. Bailey & Co., $300; Belle Lee, $100	400 00	14	1 24
12	" " Capital City	119 00	12	32
23	" cash for shtg. exp. for S. Cohen, 50c., 562	281 00	1	06
"	" invoice pr. Belle Shreveport	121 05	1	03
24	" cash p'd, protest, G. S. Hawkins, $350; G. Rice, 3.00, on Hanson & Co.	6 50		
"	" cash p'd s. d. fav. I. M. Cohen	50 00		
"	" interest to principal	49 98		
		$11,279 91		$149 24

Exhibit O—Continued.

	Interest to 24th March, 1875.	Principal.	Days.	Interest.
	Cr.			
1875.				
Jan'y 27	By nett p'c'ds of 1 b. cotton, cash 20 June	60 18	62	84
Feb'y 8	" am't collected pr. Tho's H. Allen & Co.	155 00	44	1 52
"	" draft of W. Spencer on Buckner & Co.	98 00	41	89
13	" nett p'c'ds 2 b. cotton, cash, 22 June	130 17	61	1 76
16	" " 8 do. " 3 Feb'y	412 93	49	4 50
17	" " 37 do. & pick'gs, 1 "	2,147 94	51	24 35
24	" " 32 do. 14 "	1,847 25	38	15 59
"	" " 14 do. 18 "	792 43	34	5 98
26	" " 20 do. 18 "	1,078 23	34	8 15
M'ch 2	" " 25 do. 23 "	1,359 64	29	18 76
3	" " 20 do. do. "	1,010 37	29	6 54
3	" " 14 do. 25 "	812 97	27	4 88
5	" " 27 do.	1,558 51	19	6 58
1338 12	" do. 3 do. 5 M'ch	161 18	19	68
15	" do. 26 do. 6 "	1,409 85	18	5 64
16	" do. 3 do. 9 "	170 61	15	57
17	" do. 14 do. 13 "	799 00	11	1 95
"	" draft of M. A. Byrnes on People's Bank Ph'a, $52.75	52 60	7	08
22	" do. B. H. Smith on Bussey & Co.	100 00	2	
24	" balance of interest			49 98
"	" balance carried down	1,123 05		
		$15,279 91		$149 24
1875.				
March 24	To balance bro't down due us, cash	1,123 05		
	" his note our favor, due 13 Nov'r, '74	1,628 19		
	" do. do. " 4 Dec'r, '74	1,572 51		
	" do. do. " 13 " '74	1,639 70		
		$5,963 45		

E. & O. E. New Orleans, 24th March, 1875.

(Signed) T. H. & J. M. ALLEN & CO.,
Pr. R. IRELAND.

1339 576.

Copy.

Isaac Cohen, Esq., in Acc't with T. H. & J. M. Allen & Co.

		Interest to 1st May, 1875, @ 8 %.	Principal.	Days.	Interest.
		DR.			
1875.					
M'ch	24	To balance, as per % rend., cash	$1,123 05	38	9 48
	"	" his note, our favor, due 13 Nov'r, '74	1,628 19	169	61 14
	"	" " do. " do., " 4 Dec'r, '74	1,572 51	148	51 74
	"	" " do. " do., " 13 " '74	1,639 76	139	50 66
	25	" cash paid sundry telegrams, $4.80; invoice, 259.65	264 45	37	2 17
	26	" cash paid H. Cohen	15 00	36	12
	27	" " " d'ft fav. Belle Lee, $365; Genevieve, 29 394 00	395 00	35	3 07
		" cash paid telegram to Halliday Bros. 1 00			
	29	" cash paid s. d. fav. do., 800.00, $750.00; for Sells & Co. & protest, $838.36	2,388 36	33	1 00
		" cash paid s. d. H. Kinschman, $300, fav. Bodeman & Co., $200	500 00		20 18
	31	" invoice pork pr. City Helena, cash, 27c., $928.17	928 17	35	7 22
	"	" charges on 19 b. cotton, ex. Payned $108 00	109 90	31	76
	"	" cost telegram to Sells & Co. 1 90			
Ap'l	6	" cash p'd s. d. fav. City of Helena	235 00	25	1 31
	14	" " " do. J. Clese, $240; Genevieve, $60	300 00	17	1 13
	15	" cash p'd Ferguson & P., 166.40; McMurray & Co., 28.00	194 40	16	69
	19	" cash p'd T. H. Allen & Co.	350 00	12	93
	21	" " " str. Lizzie	50 00	10	12
	22	" " " Willihill & Co.	240 00	9	48
	24	" " " L. Faulk	160 86	7	25
	27	" " " P. Hirschman	100 00	4	09
May	1	" interest to principal	192 07		
1340		CR.	$12,386 60		$212 54
1875.					
March	29	By net p'c'ds 2 b. cotton	109 72	33	81
	31	do. 17 do.	972 00	31	6 70
April	2	do. 2 do.	146 37	29	94
	3	do. 21 do.	1,178 45	28	7 33
	13	do. 4 do.	215 14	18	56
	16	do. 3 do., cash 10 Ap'l	169 19	21	79
	20	do. 1 do.	53 24	11	18
	"	" am't invoice supplied A. L. Stuart	19 10		
	21	" nett p'c'ds of 1 b. cotton	301 22	10	67
	22	" do. 19 do.	1,095 60	9	2 19
May	1	" balance of interest			192 07
		" balance carried down	8,126 63		
			$12,386 66		212 54
1875.					
May	1st	To balance bro't down, due us, cash	8,126 63		

E. & O. E. New Orleans, May 1, 1875.

(Signed) T. H. & J. M. ALLEN & CO.,
Pr. R. IRELAND.

1341 576.

Copy.

Isaac Cohen, Esq., in Account with T. H. & J. M. Allen & Co.

		Interest at 8 % to 1st August, 1875.	Principal.	Days.	Interest.
1875.					
May	1	To balance, as per % rend., cash	8,126 63	92	166 16
	4	" cash paid s. d. f. Jno. Brooker	30 00	89	59
	8	" " do. Sells & Co.	1,000 00	85	18 89
	15	" " do. Illinois	63 18	78	1 09
	21	" charges on 15 b. c. cotton, ex. Natchez	115 90	72	1 86
	31	" balance due T. H. A. & Co. on 5 mules purch'd per %	486 69	62	6 71
Aug.	1	" interest to principal	160 17		
			$9,983 17		$195 30
		CREDIT.			
1875.					
May	3	By draft of G. K. Cracroft on us	300 00	90	6 00
	8	" nett p'c'ds of 2 b. cotton	84 84	85	1 61
	11	" do. 3 do.	158 44	82	2 88
June	12	" do. 36 do.	2,089 60	50	23 22
	25	" do. 1 do.	71 63	37	59
July	19	" do. 1 do.	48 63	13	14
	"	" draft of A. Smith, ag't, on A. L. Stuart, ag't	30 00	13	09
Aug.	1	" balance of interest			160 77
	"	" balance carried down	7,200 03		
			$9,983 17		195 30
1875.					
Aug.	1	To bal'ce br't down, due us, cash	$7,200 03		

E. & O. E. New Orleans, 1st August, 1875.

(Signed) T. H. & J. M. ALLEN & CO.,
Pr. R. IRELAND.

MEM.—5 b. cotton on hand.

1342 895.

Copy.

Isaac Cohen, Esq., in Ac. with T. H. & J. M. Allen & Co.

		Interest to 25th Oct., 1875, @ 8 %.	Principal.	Days.	Interest.
1875.		Dr.			
Aug.	1	To balance, as pr. % rend., cash	$7,200 03	85	136 00
	"	" comm's'n advg., $6,954.58, @ 2½ %	173 86	54	2 09
Oct.	25	" interest to principal	133 17		
			$7,507 06		$138 09
1875.		Cr.			
Aug.	4	By nett p'c'ds of 4,b. cotton	$196 87	82	3 57
	10	" do. 1 do.	48 58	76	83
Sept.	24	" do. 2 do.	60 59	31	42
Oct.	21	" do. 2 do.	91 43	4	08
	25	" balance of interest			133 17
	"	" balance carried down	7,109 59		
			$7,507 06		$138 09
1875.					
Oct.	25	To balance bro't down, due us, cash	$7,109 59		

E. & O. E. New Orleans, 25th Oct., 1875.
(Signed) T. H. & J. M. ALLEN & CO.,
Pr. R. IRELAND.

1343 Exhibit P.

6th Dist. Court.

T. H. & J. M. Allen & Co.
vs.
Isaac Cohen; Buckner & Co., Garnishees. } No. 8638.

Statement:

Collected in satisfaction of judgement *vs.* Buckner & Co.		$1,215 99
Paid Clapp Bros. & Co. as per compromise	$650	
Paid clerk's costs	17 65	
" sheriff's do.	1	
" our fee	100	
Deduct		768 65
Balance this day paid to Messrs. T. H. & J. M. Allen & Co., in liq.		$447 34

New Orleans, July 5th, 1879.
(Signed) BREAUX, FENNER & HALL, *Att'ys.*

1344 EXHIBIT Q.

6th District Court.

T. H. & J. M. ALLEN & Co.
vs.
ISAAC COHEN. } No. 8638.

Received, New Orleans, July 5, 1879, from Breaux, Fenner & Hall, att'ys of T. H. & J. M. Allen & Co., in liq., six hundred & fifty dollars paid to us, as assignees of John Bergman, out of the sum of $1,215.99 collected under the judgement rendered in the above case against Buckner & Co., & garnishees, the said fund having been claimed by John Bergman as his individual property, and the present payment being made under the terms of a compromise between T. H. & J. M. Allen & Co. & the undersigned, as assignees aforesaid, by which we waived appeal from said judgement and consented to the execution thereof; the balance of said $1,215.99 to be credited by T. H. & J. M. Allen & Co. on their judgement against defendant, Isaac Cohen.

(Signed) CLAPP BROS. & CO.,
Pr. BANK OF GREENVILLE.

1345 EXHIBIT Z.

Duplicate.

Yellow Bayou Cotton.

BELLEVUE PLANTATION, *April 4th*, 1874.

Messrs. T. H. & J. M. Allen, New Orleans, La.

GENTLEMEN: Have shipped you from this landing since the 20th of December, 1873, to account of Charles H. Carlton, Esq., as follows:

Dec'r	20.	W H T,	4 bales	cotton,	ac't	C. H.	Carlton.
"	27.	B H S, C	1 bale	"	"	"	
"	"	W A T,	4 bales	"	"	"	
Jan.	9.	W A T,	5 "	"	"	"	
Feb'y	1.	W H T,	3 "	"	"	"	
"	28.	B H S,	13 "	"	"	"	
"	"	W H T,	3 "	"	"	"	
			33				

For which have not received any ac't sales. Please, by return mail, send duplicate ac't sales for the above cotton; also please include 8 bales to C. H. Carlton, shipped May 25th, 1873, and 4 bales, May 31st. A portion of 16 bales intended for Carlton was placed to credit of Mr. Todd.

1346 Hoping to hear from — in regards to the above,
I remain, yours truly, BENJ. H. SMITH.

Post office: Luna Landing, Arkansas.

EXHIBIT Y.

NEW ORLEANS, LA., *Sept.* 14, 1871.

Benj. H. Smith, Esq., Luna Land'g, Ark.

D'R SIR: We have yours of 4th inst. relative to 6 b. cotton taken from Bellvue Landing by "Ouachita Belle," belonging to Mr. W. H. Todd. Before the reception of your letter the boat had left port, but the agent turned over to us the cotton, which we will s-ll, as directed, for ac. Mr. Todd.

Very truly yours,

(Signed) T. H. & J. M. ALLEN & CO.,
Pr. D. W. RANDOLPH.

1347 This indenture, made the eighteenth day of August, in the year of our Lord one thousand eight hundred and seventy-six, between William H. Todd, of the city of Philadelphia, gentleman, of the first part, and James W. Cooper, of said city, manufacturer, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part at and before the ensealing and the delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, and conveyed and confirmed, and by these presents *do* grant, bargain, sell, alien, enfeoff, release, convey, and confirm, unto the said James W. Cooper, his heirs and assigns, all his, the said William H. Todd's, estate for life or other estate, right, title, and interest whatsoever of, in, and to all the real estate devised to Amanda M. Todd, wife of said William H. Todd, by the will of her father, Henry Deringer, dated February 4th, A. D. 1868, and registered at Philadelphia, of which said real — she, the said Amanda M. Todd, died seized, and being described as follows: A certain lot of ground, with the horses and stable thereon erected, situated at the northeast corner of Front and Oxford Sts., containing in front on said Front street forty feet and in depth one hundred and ten feet; also a certain lot of ground, with the two frame houses thereon erected, situated at the southeast corner of Front and Oxford Sts.; also a certain lot of ground, with the three-story brick house thereon erected, situated on the west side of Front St., No. 616, above Green St., and also a certain lot of ground, with the six brick houses thereon erected, known as the Deager place or court, situate on the east side of Tamarind St., above Green St., all in the city of Philadelphia, together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or in anywise appertaining, and the reversion and the reversions, remainder and the remainders, profits, rents, and issues thereof and of every part and parcel thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, both in law and said equity, of the party of the first part of, in, and to the said premises, with the appurtenances; to have and to hold the said prem-

ises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said William H. Todd, for himself, his heirs, his executors, his administrators, doth by these presents covenant, grant, and agree to and with the said — of the second part, his heirs and assigns, that he, the said William H. Todd, and his heirs all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him, the said William H. Todd, and his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by, from, or under him, them, or any of them shall and will warrant and forever defend.

1348 In witness whereof the said party to these presents hath hereunto set his hand and seal.

Dated the day and year first above written.

WM. H. TODD. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. R. NICHOLSON.
JOHN K. McCARTHY.

STATE OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

On the eighteenth day of August, A. D. 1876, before me, the subscriber, notary public for the State of Pennsylvania, residing in the city of Philadelphia, personally appeared the above William H. Todd and in due form of law acknowledged the foregoing indenture to be his act and deed and desired the same might be recorded as such.

Witness my hand and notarial seal this day and year aforesaid.

WM. R. NICHOLSON. [SEAL.]
Notary Public.

Recorded Aug. 21, '76.

STATE OF PENNSYLVANIA, } ss:
City and County of Phila., }

I, John O'Donnell, recorder of deeds in and for said city and county, do hereby certify that the above and foregoing is a true and correct copy of an instrument of writing found of record in my office in Deed Book No. 42 (D. H. L.), pages 150 & '1.

Witness my hand and seal of office this ninth day of October, A. D. 1883.

[SEAL.] JOHN O'DONNELL,
Recorder of Deeds.

Filed Oct. 19, 1883.

RALPH L. GOODRICH, *Clerk,*
By W. P. FEILD, *D. C.*

1349 This indenture, made the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-eight, between W. H. Todd, planter, of the first part, and James W. Cooper, of the second part, witnesseth:

That the said Todd, for and in consideration of the sum of two thousand and five dollars, lawful money of the United States of America, unto said Todd well and truly paid by the said James W. Cooper at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledge, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed unto the said James W. Cooper, heirs and assigns, the following-described property, to wit: Five certain continuous lots or pieces of ground, with the messuages — tenements thereon erected, situated on the east side of Marlborough street at the distance of three hundred and six feet southward from the south side of Belgrade, formerly West, street, in the eighteenth ward of the city of Philadelphia, containing together in front or breadth on the said Marlborough St. eighty-eight feet and extending of that width in length or breadth eastward between parallel lines at right angles with the said Marlborough St. one hundred and sixty-five feet to Savery, formerly Union, St.; also all that certain lot or piece of ground, with the messuages and tenements thereon erected, situated on the east side of Sarah St. leading from Richmond, formerly Queen, St. northward to Belgrade street, in the late district of Kensington, in the county of Philadelphia, now in the city of Philadelphia, containing in front or breadth on Sarah street twenty feet and con*tain*ing of the width eastward at right angles one hundred and fifty feet, and thence further in depth narrowing obliquely to the back of Greenwood lane lots, bounded northward by ground now or late of Cynis Pierson, eastward by the back of Greenwood lane lots, southward by ground now or late of Benjamin Day, and westward by Sarah St. aforesaid, together with all and singular the buildings and improvements, ways, streets, alleys, passages, waters, and water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever unto the hereby granted premises belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of the said William H. Todd, as well at law *or* in equity, of, in, and to the same; to have and to hold the said lots and pieces of ground, with the messuages or tenements thereon erected, above described — hereditaments and premises thereby granted or mentioned and intended so to be, with the appurtenances, unto the said James W. Cooper, his heirs and assigns, forever; and the said William H. Todd, his heirs, executors, and administrators, doth covenant, promise, and agree to and with the said James W. Cooper, his heirs and assigns, by *the* presents that he, the said William H. Todd, all and singular the hereditaments and premises hereby granted or mentioned and intended — to be, with the appurtenances, unto the said James W. Cooper, his heirs and assigns, against him, the said William
1350 H. Todd, and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part

thereof by, from, or under him or any of them doth and will warrant and forever defend.

In witness whereof the said parties have hereto set their hands and seals this day and year first above written.

WM. H. TODD. [SEAL.]

Witness at signing—sealed and delivered in presence of us—
M. A. BYRNE.
P. M. BYRNE.

Received on the day of the above indenture of the above-named James W. Cooper two thousand and five dollars in full of the consideration money above mentioned.

W. H. TODD.

Witness at signing:
M. A. BYRNE.
P. M. BYRNE.

On the tenth day of Oct., A. D. 1878, before me, the subscriber, the notary public for the Commonwealth of Pennsylvania in the city of Philadelphia, came the above-named William H. Todd and acknowledged the above indenture to be his act and deed and desired the same might be recorded as such.

M. A. BYRNE, [SEAL.]
Notary Public.

Recorded Oct. 12th, '78, at 12 m.

STATE OF PENNSYLVANIA, }
City and County of Phila., } *ss:*

I, John O'Donnell, recorder of deeds in and for said city and county, do hereby certify that the above and foregoing is a true and correct copy of an instrument of writing found of record in my office in the Deed Book D. H. L. No. 192, page 250.

Witness my hand and seal of office this tenth day of October, A. D. 1883.

[SEAL.] JOHN O'DONNELL,
Recorder of Deeds.

Endorsed: Filed October 19, 1883. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

1351 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 15th day of October, in the year of our Lord one

thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth.

[The Seal of the Circuit Court, Arkansas District, U. S. A.]

Attest: RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 185. Thomas H. Allen, Perry Nugent, and John B. Lallande, partners under the firm name of Allen, Nugent & Co., and Thomas H. Allen, appellants, *vs.* Benjamin H. Smith, Levi H. Springer, administrator of Wm. A. Todd, deceased, *et al.* Filed 24th November, 1884.